

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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In the Matter of the Application of KEITH GUERRA, ROBERT  
GRAMAGLIA, and DONALD SIEGAL,

DECISION and ORDER

Petitioners,

Index No. 2051/17

- against -

PAUL FEINER, Supervisor of the Town of Greenburgh,  
and the TOWN OF GREENBURGH, NANCY BLANK,  
THOMAS BLANK, ROBERT P. CERRATO, STEVEN J.  
WILLARD, ALICE STRAUSS, WILLIAM STANTON,  
JOANNE F. SIEGEL, SYLVIA SIMON, MICHAEL  
SCHWARTZ, HELEN M. ORCE, MARTIN PAYSON,  
EDWARD MASSENA, JOHN M. MARTIN, TRACY C.  
MAIRS, JANET LINN, FRANKLIN R. KAIMAN,  
GLENROY GORDON, JOAN GARDNER,  
MONA FRAITAG, and LLOYD CORT,

Respondents,

ROBERT B. BERNSTEIN, AUBREY G. DANIELS,  
AND HOWARD J. HIRSCH,

Intervenor/Respondents.

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CACACE, J.

The following papers, numbered one (1) through twenty (20) were read upon  
consideration of this petition for relief pursuant to article 78 of the Civil Practice Law and Rules  
(CPLR):

Notice of Petition - Verified Petition - Exhibits . . . . .	1
Amended Notice of Petition - Amended Verified Petition - Exhibits . . . . .	2
Order to Show Cause to Intervene and Dismiss - Memorandum of Law in Support - Affirmation in Support - Exhibits . . . . .	3
Affirmation in Opposition to Intervention and Dismissal - Memorandum of Law in Opposition to Intervention and Dismissal - Exhibits . . . . .	4
Affidavit in Opposition to Intervention and Dismissal . . . . .	5

Affirmation in Opposition to Intervention and Dismissal . . . . .	6
Notice of Intervenor/Respondents’ Motion to Dismiss - Affirmation in Support - Exhibits - Memorandum of Law in Support of Motion to Dismiss . . . . .	7
Verified Answer of Respondent Paul Feiner and Town of Greenburgh . . . . .	8
Memorandum of Law of Respondent Paul Feiner in Response to Verified Petition . . . . .	9
Certified Return of Record . . . . .	10
Verified Answer of Respondent Janet Linn . . . . .	11
Verified Answer of Respondent Hugh Schwartz . . . . .	12
Notice of Intervenor/Respondents’ Motion to Dismiss - Affirmation in Support of Motion to Dismiss- Memorandum of Law in Support of Motion to Dismiss . . . . .	13
Affirmation in Opposition to Intervenor/Respondents’ Motion to Dismiss - Memorandum of Law in Opposition . . . . .	14
Notice of Petitioners’ Cross-Motion to Consolidate - Affirmation in Support - Exhibits . . . . .	15
Opposition to Intervenor/Respondents’ Motion to Dismiss and in Support of Petitioners’ Motion to Consolidate of Respondents Janet Linn and Hugh Schwartz . . . . .	15
Reply in Support of Intervenor/Respondents’ Motion to Dismiss - Affirmation in Further Support - Exhibits . . . . .	16
Notice of Intervenor/Respondents’ Amended Motion to Dismiss - Affirmation in Support of Amended Motion to Dismiss- Memorandum of Law in Support of Amended Motion to Dismiss . . . . .	17
Petitioners’ Affirmation in Opposition to Intervenor/Respondents’ Amended Motion to Dismiss . . . . .	18
Affidavit in Opposition to Amended Motion to Dismiss of Respondent Janet Linn . . . . .	19
Reply Memorandum of Law in Support of Amended Motion to Dismiss . . . . .	20

Upon the foregoing papers, it is decided and ordered that the instant petition is addressed as follows:

Procedural History

The petitioners bring this proceeding for a judgment pursuant to article 78 of the CPLR by an amended verified petition which challenges the decision made by respondent Paul Feiner in his capacity as the Town Supervisor of the Town of Greenburgh, dated May 5, 2017, which denied a petition for incorporation (hereinafter, the Incorporation Petition) filed on behalf of those residents of the Town of Greenburgh who were seeking the legal authority to conduct a

referendum regarding the potential creation of the incorporated Village of Edgemont from within the Town of Greenburgh pursuant to Article 2 of the Village Law. From the record of this proceeding, it appears that the intervenor/respondents Robert B. Bernstein, Aubrey G. Daniels and Howard J. Hirsch<sup>1</sup> filed the Incorporation Petition, bearing 1,317 signatures, with the Greenburgh Town Clerk on February 27, 2017, and that public hearings were conducted thereupon on April 5, 2017 and April 25, 2017. On May 5, 2017, respondent Feiner issued a written decision denying the Incorporation Petition upon three distinct grounds, including the failure of same to describe the territory of the proposed Village of Edgemont with the requisite “common certainty” within the meaning of Village Law § 2-202(c)(1), the failure of same to reflect the signatures of 20 percent of the residents of the proposed Village of Edgemont as required by Village Law § 2-202(1)(a)(1), and the failure of same to include an adequate list of the regular inhabitants of the proposed Village of Edgemont as required by Village Law § 2-202(c)(2) (hereinafter, the challenged decision).

Although the petitioners are opponents of both the Incorporation Petition and the creation of an incorporated Village of Edgemont, they oppose the challenged decision to the extent that respondent Feiner therein relied upon only three distinct grounds for the denial of the Incorporation Petition rather than four such grounds. Thereupon, through the instant amended verified petition, the petitioners seek various forms of relief from this Court, including (1) the annulment of the challenged decision made by respondent Paul Feiner, or, in the alternative,

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<sup>1</sup>By the Decision and Order of this Court, filed and entered on October 27, 2017, the motion to intervene in this proceeding brought by these three individuals was granted pursuant to CPPLR 7802(d), and these three individuals, the proposed intervenor/respondents, then became the intervenor/respondents in this proceeding.

(2) the issuance of a directive that additional testimony or evidence necessary for the proper disposition of the sufficiency of the Incorporation Petition be taken by this Court, or by a referee appointed by this Court. In support of the instant petition for relief, the petitioners allege that although the challenged decision properly denied the Incorporation Petition upon the three distinct grounds referenced *supra*, same failed to properly reflect an additional ground for the denial of the Incorporation Petition. As proposed by the petitioners, that additional ground would be the alleged failure of each page of the Incorporation Petition and all exhibits and certifications to be securely fastened together pursuant to the terms of Village Law § 2-202(b)(6), challenging respondent Feiner's allegedly erroneous determination set forth within the challenged decision that this additional ground was not supported by sufficient evidence.

Dy Decision and Order, filed and entered on October 26, 2017, this Court granted the application of the present intervenor/respondents Robert B. Bernstein, Aubrey G. Daniels and Howard J. Hirsch,<sup>2</sup> to intervene in this proceeding pursuant to CPLR 7802(d) over the objections raised by the petitioners and all of the respondents in this proceeding save Michael Schwartz and Franklin R. Kaiman. Specifically, this Court determined therein that permitting Robert B. Bernstein, Aubrey G. Daniels and Howard J. Hirsch to intervene in this proceeding was proper based upon their demonstrated real and substantial interest in the outcome of this proceeding, as well as the absence of any showing by the opponents thereof that such intervention would unduly

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<sup>2</sup>These intervenor/respondents were the very same three individual petitioners who had commenced the article 78 proceeding brought under Index No. 58799/17 prior to the commencement of the instant article 78 proceeding, through which they sought - just as the petitioners in the instant proceeding - to challenge the decision made by respondent Paul Feiner in his capacity as the Town Supervisor of the Town of Greenburgh, dated May 5, 2017, which had denied the Incorporation Petition, but who were unnamed in this proceeding when it was commenced.

delay these proceedings or otherwise prejudice their rights.

In opposition to the instant amended verified petition, the intervenor/respondents filed a pre-answer motion seeking the dismissal of same pursuant to CPLR 3211(a)(7), arguing that the instant petition must be dismissed upon the following grounds: (1) the instant proceeding is unripe for judicial review insofar as the resolution of the fully-submitted and then-pending article 78 proceeding brought by the intervenor/respondents under Index No. 58799/17 against the very same respondents who are named in this proceeding may render this proceeding moot, (2) the petitioners lack standing to maintain the claims raised in this proceeding, and (3) the petitioners fail to raise a cause of action in support of this proceeding. The petitioners opposed the intervenor/respondents' motion to dismiss this proceeding, arguing that (1) the intervenor/respondents' mootness challenge to the instant proceeding would be obviated in the event that this Court were to grant the petitioners' simultaneously filed motion seeking the consolidation of this proceeding and the previously pending article 78 proceeding brought by the intervenor/respondents against the very same respondents who are named in this proceeding under Index No. 58799/17, (2) the petitioners have adequately demonstrated their standing to maintain this proceeding, (3) the amended verified petition raises a cause of action in support of this proceeding, and (4) the failure of the amended verified petition to name the intervenor/respondents as parties is of no consequence, as the intervenor/respondents are not necessary parties to this proceeding.

Although none of the originally named respondents in this proceeding have moved to dismiss this proceeding, nor joined in the intervenor/respondent's motion to dismiss this proceeding, respondent Janet Linn interposed papers in opposition to the intervenor/respondents'

motion to dismiss this proceeding upon argument which mirrors that raised by the petitioners in opposition thereto, arguing that (1) the intervenor/respondents' mootness challenge to the instant proceeding would be obviated in the event that this Court were to grant the petitioners' simultaneously filed motion seeking the consolidation of this proceeding and the previously pending article 78 proceeding brought by the intervenor/respondents against the very same respondents who are named in this proceeding under Index No. 58799/17, (2) the petitioners have adequately demonstrated their standing to maintain this proceeding, (3) the amended verified petition raises a cause of action in support of this proceeding, and (4) the failure of the amended verified petition to name the intervenor/respondents as parties is of no consequence, as the intervenor/respondents are not necessary parties to this proceeding.

By Decision, Order and Judgment, filed and entered on February 1, 2018, a period of nine (9) days following the full submission of papers by all parties in connection with the intervenor/respondents' pre-answer motion to dismiss this proceeding, this Court resolved the previously filed article 78 proceeding brought by the intervenor/respondents as petitioners under Index No. 58799/17 by granting the petition upon the challenges raised therein to the decision made by respondent Paul Feiner in his capacity as the Town Supervisor of the Town of Greenburgh, dated May 5, 2017, which had denied the Incorporation Petition. Specifically, this Court therein reversed, vacated and annulled the challenged decision made by respondent Feiner to deny the Incorporation Petition, and further issued a declaratory judgment that the Incorporation Petition is compliant with all requirements of Article 2 of the Village Law upon finding that there were no sustained objections to the Incorporation Petition. Thereupon, this Court ordered that the Town Clerk of the Town of Greenburgh shall comply with the terms of

Village Law §§ 2-212, 2-214, 2-218 and 2-220 and undertake all actions necessary, pursuant to the authority and obligations appearing thereunder, to schedule an election to determine the question of incorporation no later than 40 days from the date of filing of that Decision, Order and Judgment, thereby permitting each resident of the proposed Village of Edgemont who is qualified to vote for town officers of the Town of Greenburgh, to exercise their individual statutory right to vote and thereby determine whether the proposed Village of Edgemont shall become the incorporated Village of Edgemont pursuant to the provisions and authority of Article 2 of the Village Law.

Subsequently, this Court wrote to all parties to this proceeding on February 5, 2018, to schedule a conference for the purpose of addressing the legal impact upon this proceeding of the Court's Decision, Order and Judgment rendered upon the article 78 proceeding brought under Index No. 58799/17, as same had served to reverse, vacate and annul the challenged decision, and thereby had provided the petitioners with the ultimate relief they expressly seek through the instant proceeding - that being the annulment of the challenged decision. After all parties and/or their legal representatives, except for pro se respondent Franklin R. Kaiman who elected not to attend, appeared before the Court for a conference on February 13, 2018, the petitioners' attorney, Thomas Troetti, Esq., wrote to the Court on February 20, 2018 to advise that the petitioners had directed him to continue to pursue the litigation of this matter, and that he would not be withdrawing this article 78 proceeding. In response thereto, this Court wrote to all parties and established a motion schedule which permitted the respondents and intervenor/respondents to submit amended motions to dismiss this proceeding upon grounds which accounted for the Court's recent resolution of the article 78 proceeding brought under Index No. 58799/17 by the

issuance of the Decision, Order and Judgment, filed and entered on February 1, 2018, which granted the petition for relief seeking, *inter alia*, to reverse, annul and vacate the challenged decision to deny the Incorporation Petition made by respondent Feiner on May 5, 2017.

In opposition to the instant amended verified petition, the intervenor/respondents filed an amended pre-answer motion to dismiss, incorporating therein the relief sought through their previously filed pre-answer motion to dismiss, further seeking the dismissal of the amended verified petition pursuant to CPLR 3211(a)(7), arguing that (1) the instant proceeding has been rendered moot by the Court's recent resolution of the article 78 proceeding brought under Index No. 58799/17 by the Decision, Order and Judgment of this Court, filed and entered on February 1, 2018, which granted the petition for relief seeking, *inter alia*, to reverse, annul and vacate the challenged decision to deny the Incorporation Petition made by respondent Feiner on May 5, 2017, (2) the instant proceeding is barred for resolution pursuant to the doctrine of *res judicata* based upon the allegation that the issues raised in both the instant article 78 proceeding and those raised in the article 78 proceeding brought under Index No. 58799/17 are based upon the same transaction or series of connected transactions, and (3) the instant proceeding is barred for resolution pursuant to the doctrine of collateral estoppel based upon the allegation that the resolution of the issues raised in the article 78 proceeding brought under Index No. 58799/17 upon the merits by this Court through its Decision, Order and Judgment, filed and entered on February 1, 2018, served to resolve the issues raised in the instant article 78 proceeding.

In opposition to the intervenor/respondents' amended pre-answer motion to dismiss, the petitioners argue (1) that the instant proceeding is not barred for resolution pursuant to the doctrines of either collateral estoppel or *res judicata*, as the instant amended verified petition

challenges the legal sufficiency of the Incorporation Petition upon the alleged failure of each page of the Incorporation Petition to be securely fastened together with all exhibits and certifications pursuant to the terms of Village Law § 2-202(b)(6), which was not one of the issues raised in the article 78 proceeding brought under Index No. 58799/17, and was not an issue that was capable of being raised by the petitioners through the article 78 proceeding brought under Index No. 58799/17, and (2) that the instant proceeding has not been rendered moot by the Court's recent resolution of the article 78 proceeding brought under Index No. 58799/17 by the Decision, Order and Judgment of this Court, filed and entered on February 1, 2018, as the petitioners argue that they seek the annulment of respondent Feiner's challenged decision upon a ground which is distinct from those grounds raised in the now-resolved article 78 proceeding brought under Index No. 58799/17.

In opposition to the intervenor/respondents' amended pre-answer motion to dismiss, respondent Janet Linn argues (1) that the instant proceeding is not barred for resolution pursuant to the doctrines of either collateral estoppel or *res judicata*, as the instant amended verified petition challenges the legal sufficiency of the Incorporation Petition upon the alleged failure of each page of the Incorporation Petition to be securely fastened together with and all exhibits and certifications pursuant to the terms of Village Law § 2-202(b)(6), which was not one of the issues raised in the article 78 proceeding brought under Index No. 58799/17, and was not an issue that was capable of being raised by her through the article 78 proceeding brought under Index No. 58799/17, and (2) that the instant proceeding has not been rendered moot by the Court's recent resolution of the article 78 proceeding brought under Index No. 58799/17 by the Decision, Order and Judgment of this Court, filed and entered on February 1, 2018, as the amended verified

petition which commenced that proceeding sought relief which is distinct from the relief sought through the instant amended verified petition.

### Factual Findings

The record presented establishes that the petitioners are residents of the Town of Greenburgh who oppose the decision made by respondent Paul Feiner in his capacity as the Town Supervisor of the Town of Greenburgh, dated May 5, 2017, which had denied the Incorporation Petition, and through this proceeding seek the annulment of that decision.<sup>3</sup> In substance, the Incorporation Petition alleged the following: (1) that it bore the signatures of 1,317 residents of the proposed Village of Edgemont who were qualified to vote for town officers in the Town of Greenburgh, which number constitutes more than 20% of the residents of the proposed Village of Edgemont, (2) that the name of the area proposed to be incorporated by the Incorporation Petition would be the Village of Edgemont, (3) that the area of the proposed Village of Edgemont contains a population of at least 500 regular inhabitants, (4) that the limits of the area of the proposed Village of Edgemont do not contain more than 5 square miles, (5) that the limits of the area of the proposed Village of Edgemont do not include a part of any city or

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<sup>3</sup>Notably, the although the petitioners in this proceeding oppose, challenge and seek the annulment of the decision made by respondent Paul Feiner in his capacity as the Town Supervisor of the Town of Greenburgh, dated May 5, 2017, which had denied the Incorporation Petition, these same petitioners incongruously also oppose the relief sought through the Incorporation Petition by those residents of the Town of Greenburgh who were seeking the legal authority to conduct a referendum regarding the potential creation of the incorporated Village of Edgemont from within a presently unincorporated area of the Town of Greenburgh pursuant to Article 2 of the Village Law.

village, (6) that it designates 3 persons, as listed by name and home address, upon whom papers required to be served in connection with the proceeding for incorporation shall be served, (7) that a majority of those 3 designated persons reside within the territory of the proposed Village of Edgemont, (8) that, before the signature pages which followed, there is a description of the area of the proposed Village of Edgemont that is sufficient to identify the location and extent of that territory with common certainty through a map annexed thereto which depicted and established the bounds of a fire district established by a resolution of the Board of Supervisors of Westchester County on July 2, 1923 and was co-extensive with School District No. 6 of the Town of Greenburgh, thereby particularly describing the boundaries of the proposed Village of Edgemont as being reflected in that annexed map of the established fire district, and (9) that, before the signature pages which followed, there is a list of the names and addresses of the regular inhabitants of the territory of the proposed Village of Edgemont. Furthermore, each of the signature pages annexed to the Incorporation Petition are subscribed on separate sheets of paper following the annexed exhibits, contain a prefatory statement which identifies same as a petition for incorporation, and makes known that each of the signatories were familiar with the contents and purpose of the petition for incorporation, as well as the boundaries of the proposed Village of Edgemont. In addition, following each signature there is a handwritten address and printed name of each signatory, as well as an authenticating affidavit of a witness to each signature and his or her address, located at the bottom of each page.

With specific regard to those allegations raised within the Incorporation Petition in support of the statutory requirement of Village Law § 2-202(1)(a)(1) that a petition for incorporation be brought on behalf of at least 20% of the residents of the proposed Village of

Edgemont who are qualified to vote for elected officials of the Town of Greenburgh, as well as the requirements of Village Law § 2-202(b)(3) that the territory of the proposed Village of Edgemont contains a population of at least 500 regular inhabitants, the petitioners proffer the affidavit of Sharyn E. Lewis as Exhibit B to the Incorporation Petition to reflect the manner by which it is alleged therein that these specific statutory criteria are satisfied. In support of her allegation that the Incorporation Petition was being brought on behalf of at least 20% of the residents of the proposed Village of Edgemont who are qualified to vote for elected officials of the Town of Greenburgh, Ms. Lewis submits under oath that on or about and between September of 2016 and February of 2017 she obtained the most recent voter registration rolls for each election district (ED) that contains voters residing within the area of the proposed Village of Edgemont - as defined by the Greenville Fire District boundaries - from the Westchester County Board of Elections, including ED 33, ED 34, ED 35, ED 36, ED 49, ED 69, ED 70 and ED 75. Ms. Lewis further explains that after adding all newly enrolled voters in these ED's for the time period between September of 2016 and February of 2017, and after deducting all of those voters who were no longer on the voter registration rolls for these ED's over the same time, a total of 6,668 voters was calculated as of the last voter registration rolls provided to her by the Board of Elections in response to her written request for same on February 3, 2017.

Within Exhibit B to the Incorporation Petition, Ms. Lewis then relates that the preliminary total of 6,668 voters drawn from within the examined ED's was further diminished by 1,231 to reflect those registered voters whose street addresses lay outside of the boundaries of the proposed Village of Edgemont as defined by the Greenville Fire District boundaries through the utilization of a Board of Elections map entitled *Greenburgh NY - Political Subdivisions 2012*,

the Westchester County Geographic Information Systems Interactive Mapping Applications (GIS) online tool, as well as the Greenburgh GIS and Tax Information online tool. In addition, Ms. Lewis further explains within Exhibit B to the Incorporation Petition that she further diminished the preliminary total of 6,668 voters by 61 to account for those registered voters on that list who she had determined to be deceased through her utilization of the Social Security Death Index (SSDI) and online obituaries, as well as the further diminution by 25 to account for those individuals who had filed duplicate voter registration forms with the Board of Elections. Through Exhibit B to the Incorporation Petition, Ms. Lewis explains the additional reduction of the preliminary total of 6,668 voters by another 170, then by 132, and then by 59, to reflect those registered voters appearing on the Board of Elections lists who were no longer residing within the boundaries of the proposed Village of Edgemont upon their relocation to residences outside of those boundaries, and the further reduction of the preliminary total by 58, and then by 5, to account for those non-resident adult children of current or former homeowners from within those boundaries. Finally, Ms. Lewis explains within Exhibit B to the Incorporation Petition that she further diminished the preliminary total of 6,668 voters by 4 to reflect those registered voters appearing on the Board of Elections lists whose addresses were not listed anywhere within the Town of Greenburgh, and that she added 34 to the preliminary total to reflect those signatories of the Incorporation Petition who are residents of homes located within the proposed Village of Edgemont, but are not yet registered to vote despite their eligibility to do so. Upon these bases, as detailed and supported by the sworn affidavit of Sharyn E. Lewis, the Incorporation Petition represents that there were 4,827 residents of homes located within the boundaries of the proposed Village of Edgemont, whom she also characterized as regular inhabitants thereof, who were

registered to vote for officers of the Town of Greenburgh as of February 3, 2017. In this regard, the Incorporation Petition bears and is supported by a list of the names and addresses of these 4,827 residents, further characterized therein as regular inhabitants, of the proposed Village of Edgemont. In connection therewith, the Incorporation Petition bears and is further supported by the names, signatures and addresses of 1,317 of the 4,827 residents of the proposed Village of Edgemont who were qualified to vote for town officers in the Town of Greenburgh as of February 3, 2017, which the Incorporation Petition represents as constituting more than 20% of the 4,827 residents of the proposed Village of Edgemont.

With specific regard to those allegations raised within the Incorporation Petition in support of the statutory requirement of Village Law § 2-202(1)(c)(1) that a petition for incorporation provide a description of the location and extent of the territory of the proposed area of incorporation with common certainty, there is a description provided therein of the boundaries of the proposed Village of Edgemont in the form of both the metes-and-bounds description of the boundaries of the Greenville Fire District which was adopted by resolution of the Board of Supervisors of Westchester County on July 2, 1923, as well as through an annexed map depicting the boundaries of the Greenville Fire District which was drawn in 1934 from the metes-and-bounds description that established the Board of Supervisors of Westchester County's previously approved boundaries of the Greenville Fire District in 1923, and even further referencing same as being co-extensive with School District No. 6 of the Town of Greenburgh, commonly referred to as the Edgemont School District.

Thereupon, acting pursuant to the authority derived from Village Law §§ 2-202 and 2-204, respondent Feiner scheduled a public hearing for April 5, 2017 to take testimony as to

objections regarding the legal sufficiency of the Incorporation Petition, and posted public notices designed to advise residents of the Town of Greenburgh of their respective right to appear and participate in this upcoming public hearing. As scheduled, a public hearing upon the legal sufficiency of the Incorporation Petition was conducted and presided over by respondent Feiner on April 5, 2017, who made a statement at the outset regarding the procedure he would be utilizing for the taking of objections, and advised the attendees that he had retained an attorney, Robert Spolzino, Esq., who was present to assist him with the hearing proceedings. Thereafter, the hearing commenced with the taking of objections from attendees, the first of which was respondent Janet Linn who summarized her previously submitted written affidavit by offering her suspicion that “there might have been” an earlier version of the Incorporation Petition shown to some of its signatories, that the list of Regular Inhabitants is inaccurate to the extent that it fails to list three specific persons who are regular inhabitants of the Town of Greenburgh, and does list two specific persons, one of whom is Daniel Bernstein, who reside outside of the Town of Greenburgh, and that the list of Regular Inhabitants is undated and lacks an attributed source.

The second objector, respondent Martin Payson, summarized his previously submitted written affidavit by claiming that “there is no common certainty as was stated in the petition,” and that the boundaries of the Greenville Fire District and School District No. 6 are not “coterminous.” In addition, respondent Payson then read aloud a statement he attributed to respondent Thomas Blank, a third objector, relating that he was not shown a map or other description of the boundaries of the proposed Village of Edgemont, nor a list of Regular Inhabitants when he signed the Incorporation Petition.

The fourth person who was permitted to speak, William Stanton of Stanton. P.I., Inc.,

acknowledged that he was not an objector, but rather had been hired by respondent Feiner, and offered his belief, in terms of “it seems apparent that,” there are varying accounts from some unspecified number of “residents” regarding what they had been told at “incorporation meetings” concerning the boundaries of the proposed Village of Edgemont, and what documents they may or may not have been shown, concluding with a solicitation to the attendees to contact his office at a toll-free telephone number.

The fourth objector, respondent Tracy Mairs, claimed that she had reviewed the Incorporation Petition and that she believed that it contained duplicate signatures from 29 of its signatories. The next person who was permitted to speak was the Town Clerk of the Town of Greenburgh, Judith M. Beville, who then read aloud a statement she attributed to respondent Edward Massena, a fifth objector, relating that the boundary of the proposed Village of Edgemont “is not coterminous with the entire boundaries of a school, fire, fire protection, fire alarm town special, or town improvement district and the limits of such territory are not coterminous with parts of the boundaries of more than one school, fire, fire protection, fire alarm, town special, or town improvement district, of which all are wholly contained within such limits and within one town as required by Section 2-200 of the New York State Village Law.”

The sixth objector, respondent Lloyd Cort, stated that pages 117 and 120 of the Incorporation Petition did not contain a prefatory statement as required by New York State Village Law 2-200(1)(E). The seventh objector, respondent Glen Gordon, stated that he believed that the proposed Village of Edgemont includes a portion of the City of Yonkers. The eighth objector, respondent Sylvia Simon, stated that because the Incorporation Petition did not provide the source which was utilized to create its list of 4,826 residents who are qualified to vote upon

the incorporation of the proposed Village of Edgemont, the Town Supervisor could not determine whether the Incorporation Petition bears the signature of at least 20% of such qualified voters as required by Section 2-200 of the New York State Village Law.

The ninth objector, respondent Mona Freitag, claimed that she believed that the same individual named Carl Bernstein had signed the Incorporation Petition on both June 14<sup>th</sup> and July 11<sup>th</sup> with what she believed to be different signatures based upon her personal review of the signature of an individual named Carl Bernstein on file with the Westchester County Board of Elections, which lead her to argue that all of the total of 233 signatures which were witnessed by Graf Daniels and Alix M. Brown, the two people whose notarized signatures appeared at the bottom of pages 169 and 187 of the Incorporation Petition beneath both of the referenced Carl Bernstein signatures, “should be deemed invalid.”

The tenth objector, respondent Joan Gardner, stated that because the Incorporation Petition did not provide the source which was utilized to create its list of 4,826 residents who are qualified to vote upon the incorporation of the proposed Village of Edgemont, the Town Supervisor could not determine whether the Incorporation Petition bears the signature of at least 20% of such qualified voters as required by Section 2-200 of the New York State Village Law.

Thereafter, an individual named Mark Rosenblatt attempted to speak about what he described as the inaccuracies in the objections raised by one or more of the objectors, but respondent Paul Feiner’s attorney, Robert Spolzino, Esq., interjected and declined to permit Mr. Rosenblatt to speak on such matters due to his belief that the Village Law did not allow for such testimony. Intervenor/respondent Robert Bernstein, who was in attendance, reacted to the exchange between Mr. Rosenblatt and Mr. Spolzino by interjecting that he believed that the

Village Law did permit Mr. Rosenblatt to speak during the hearing about the objections previously raised. In apparent response to the exchange between Mr. Spolzino and intervenor/respondent Bernstein, respondent Feiner terminated the continuation of the hearing and adjourned same until April 25, 2017. Subsequently, respondent Feiner advanced the next hearing date from April 25, 2017 to April 24, 2017.

As scheduled, the continued public hearing upon the legal sufficiency of the Incorporation Petition was conducted and presided over by respondent Feiner on April 24, 2017, who was assisted by his attorney, Robert Spolzino, Esq., and the Town Attorney for the Town of Greenburgh, Timothy Lewis, Esq., who made a statement at the outset admitting a multitude of documents into the record, starting with the Incorporation Petition which was contained within Exhibits #1 and #2, and continuing with the affidavit of respondent Janet Linn which reflected her testimony given as an objector on April 5, 2017 and was admitted into evidence as Exhibit #3, the affidavit of respondent Thomas Blank which reflected his testimony given as an objector on April 5, 2017 and was admitted as Exhibit #4, the affidavit of respondent Tracy Mairs which reflected her testimony given as an objector on April 5, 2017 and was admitted as Exhibit #5, the affidavit of respondent Edward Massena which reflected his testimony given as an objector on April 5, 2017 and was admitted as Exhibit #6, the affidavit of respondent Lloyd Cort which reflected his testimony given as an objector on April 5, 2017 and was admitted as Exhibit #7, the affidavit of respondent Glenroy Gordon which reflected his testimony given as an objector on April 5, 2017 and was admitted as Exhibit #8, and the affidavit of respondent Sylvia Simon which reflected her testimony given as an objector on April 5, 2017 and was admitted as Exhibit #9, and the affidavit of respondent Joan Gardner which reflected her testimony given as

an objector on April 5, 2017 and was admitted as Exhibit #10.

Thereafter, in his capacity as the Town Attorney for the Town of Greenburgh, Mr. Lewis published the affidavit of respondent Steve J. Willard, a professional land surveyor who had been hired by the Town of Greenburgh to submit his affidavit, which was admitted as Exhibit #11, relating that the 1934 Greenville Fire District map, annexed to the Incorporation Petition to define the boundaries of the proposed Village of Edgemont, contained a small area which is also within the Hartsdale Fire District, leading to his conclusion that since the Greenville Fire District map is not coterminous with the boundaries of the entire Greenville Fire District, there is no common certainty in the description of the area of the proposed Village of Edgemont due to the overlap of properties in both of these fire districts. Mr. Lewis next published the affidavit of respondent John H. Martin, Esq., an attorney who was hired by respondent Feiner to submit his affidavit, which was admitted as Exhibit #19, relating that there exists an overlap between the northerly boundary of the Greenville Fire District and the southerly boundary of the Hartsdale Fire District, leading him to conclude that there is no common certainty regarding the boundaries of the Greenville Fire District, nor the area of the proposed Village of Edgemont.

Thereafter, Mr. Lewis, in his capacity as the Town Attorney for the Town of Greenburgh, returned to the affidavits of objectors and published the affidavit of respondent Alice Strauss as the eleventh objector which reflected her written objection to the proposed incorporation of the Village of Edgemont without further comment, admitting same into evidence as Exhibit #16. Mr. Lewis then published the affidavit of respondent Robert Cerrato as the twelfth objector which reflected his belief that the Incorporation Petition includes the signatures of 145 people who were not listed with Exhibit B annexed thereto as regular inhabitants of the proposed

Village of Edgemont who are qualified to vote for officers therein, admitting same into evidence as Exhibit #18. Mr. Lewis then published the affidavit of respondent Helen Orce as the thirteenth objector, which reflected her status as a current member of the Board of Commissioners of the Greenville Fire District and related her belief that there are areas within the Greenville Fire District which are not located within the boundaries of the Edgemont School District, admitting same into evidence as Exhibit #17.

Respondent Feiner then directed Mr. Lewis to commence the taking of testimony from attendees as to objections, leading first to the testimony of respondent Donald Siegel as the fourteenth objector, who claimed that the Greenville Fire District map annexed to the Incorporation Petition is not coterminous with the boundaries of the entire Greenville Fire District and consequently, there is no common certainty in the description of the area of the proposed Village of Edgemont due to the overlap of properties in both the Hartsdale Fire District and the Greenville Fire District, and same was admitted into evidence as Exhibit #24.

Thereafter, respondent Joanne Siegel spoke as the fifteenth objector, stating that she believed that the records of the Board of Elections reflected 7,319 persons were qualified to vote for officers of the Town of Greenburgh from within the proposed area of the Village of Edgemont, and further believed that the Incorporation Petition contained only 142 such signatures, which lead her to conclude that the Incorporation Petition did not contain the signatures of 20% of the residents who were qualified to vote in the proposed Village of Edgemont.

Following the testimony of respondent Siegel, respondent Feiner verbally indicated that he was going to permit respondent Freitag to testify again, despite the objection raised to such action by intervenor/respondent Bernstein based upon her previous testimony given during the

hearing session conducted on April 5, 2017, citing to respondent Feiner's admonition at the commencement of that hearing session to the effect that each speaker would be afforded no more than one opportunity to address the hearing assembly for a maximum of 3 minutes. In apparent response to this objection, respondent Feiner then directed respondent Freitag to submit her additional affidavit without submitting any testimony, although it does not appear from the record of this proceeding that this undated affidavit, as notarized on April 23, 2017, was admitted into evidence.

The hearing session continued with the testimony of Paul Sherwin, who raised argument in opposition to the objection submitted previously by respondent Blank during the preceding hearing session on April 5, 2017, stating that he was present with respondent Blank when he signed the Incorporation Petition and recalled that, contrary to respondent Blank's earlier claims submitted on April 5, 2017, he had been provided with the Greenville Fire District map and a metes and bounds description of the boundaries of the proposed Village of Edgemont before signing the Incorporation Petition. Thereafter, Diane Gipstein testified and raised argument in opposition to the objection submitted previously by respondent Cerrato during the preceding hearing session on April 5, 2017, stating that at least 49 of the 145 names claimed by respondent Cerrato to have been absent from the list or regular inhabitants of the proposed Village of Edgemont were actually listed therein. Ms. Gipstein further challenged respondent Cort's objection given during the April 5, 2017 hearing session, asserting that only 2 of the 335 signature pages contained within the Incorporation Petition failed to have the required prefatory statement, bearing a total of merely 3 signatures, which left a sufficient number of signatures upon the remaining 333 signature pages to satisfy and exceed the requisite 20% figure of the

regular inhabitants of the proposed Village of Edgemont as required by the Village Law. Lastly, Ms. Gipstein challenged respondent Mairs' objection given during the April 5, 2017 hearing session, asserting that she had determined that only 27 of the 29 signatures alleged by respondent Mairs to appear twice on the signature pages annexed to the Incorporation Petition were actual duplicate signatures.

Thereafter, Tarang Gupta testified and raised argument in opposition to the objection submitted previously by respondent Gordon during the preceding hearing session on April 5, 2017, stating that despite respondent Gordon's claim that a portion of the proposed Village of Edgemont was located within the City of Yonkers, the Incorporation Petition repeatedly indicates that the metes and bounds description of the southerly boundary of the proposed Village of Edgemont is the northerly boundary line of the City of Yonkers which precludes one municipality from overlapping the other.

In further opposition to the objection submitted previously by respondent Blank during the preceding hearing session on April 5, 2017, Michael Weksler stated that he was present when respondent Blank signed the Incorporation Petition and heard intervenor/respondent Bernstein define the area of the proposed Village of Edgemont as being entirely consistent with the boundaries of the Greenville Fire District as set forth on the Greenville Fire District map, rather than utilizing the slightly distinct boundaries of the Edgemont School District, due to long-standing uncertainty regarding the legal description of its boundaries.

Thereafter, Daniel Bernstein testified and challenged the reliability and accuracy of the claims raised in the objection submitted previously by respondent Linn during the preceding hearing session on April 5, 2017, stating that despite respondent Linn's claim that his inclusion

upon the list of Regular Inhabitants within the Incorporation Petition should be stricken due to her belief that he resided in the State of California, he has never resided within the State of California and continues to maintain his permanent residence within the area of the proposed Village of Edgemont - unlike his brother who presently attends college within the State of California.

The next testimonial was submitted by Mark Lukasiewicz, who challenged the admission and consideration by respondent Feiner of the testimony of William Stanton of Stanton, P.I., Inc., which was submitted during the hearing session on April 5, 2017, as Mr. Stanton was admittedly not an objector and not a resident qualified to vote for town officers in the Town of Greenburgh, but rather had been hired by respondent Feiner at the expense of the Town of Greenburgh and had employed deceitful practices in an attempt to trick signatories of the Incorporation Petition to sign affidavits invalidating their previously proffered signatures.

Thereafter, Marc Ackerman testified and raised argument in opposition to the objection submitted previously by respondent Payson during the preceding hearing session on April 5, 2017, stating that despite respondent Payson's suggestion that the Incorporation Petition failed to provide common certainty of the boundaries of the proposed Village of Edgemont due to the fact that the boundaries of the Greenville Fire District are not presently coterminous with the boundaries of the Greenville School District, the boundaries of the Greenville Fire District, which were legislatively created by a resolution of the Board of Supervisors of Westchester County in 1923 to mirror and be coextensive with the boundaries of the then-existing Edgemont School District, which had been defined and laid out upon a map that was filed with the Town of Greenburgh in 1899. Mr. Ackerman continued with argument that despite the subsequent

legislative change of the boundaries of the Edgemont School District to make the boundaries between it and the Greenville Fire District distinct today, the map of the Greenville Fire District which was filed within the Incorporation Petition<sup>4</sup> was based upon the original metes and bounds description approved by the Board of Supervisors of Westchester County in 1923 does provide the requisite common certainty of the boundaries of the proposed Village of Edgemont.

The hearing session continued with the testimony of Jason Feldman, who raised argument in opposition to the objection submitted previously by respondents Gardner, Simon and Massena during the preceding hearing session on April 5, 2017, stating that when he and other volunteers compiled the list of Regular Inhabitants submitted within the Incorporation Petition, they utilized multiple sources of information including voter registration rolls, obituaries and the Social Security Death Index, and submitted that the list of Regular Inhabitants submitted within the Incorporation Petition was accurate as of February 3, 2017.

The next testimonial was submitted by Michelle McNally who testified and raised argument in opposition to the objections submitted previously by respondents Payson and Orce during the preceding hearing session on April 5, 2017, stating that the Incorporation Petition's reliance upon the Greenville Fire District map for a description of the area of the proposed Village of Edgemont, being consistent with the metes and bounds description of the Greenville Fire District approved by resolution of the Board of Supervisors of Westchester County in 1923, is sufficient to identify the location and extent of the area of the proposed Village of Edgemont with common certainty irrespective of the "besides the point" argument raised by these two

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<sup>4</sup> The map of the Greenville Fire District, as created and filed in 1934, which was filed within the Incorporation Petition is previously referred to herein as the GFD map.

respondents to the effect that the Greenville Fire District and the Edgemont School District are not coterminous.

The next testimonial was submitted by Michael Mellis who testified and raised argument in opposition to the objection submitted previously by respondent Janet Linn during the preceding hearing session on April 5, 2017, stating that her claim that the Incorporation Petition failed to contain the signatures of 20% of voters residing within the area of the proposed Village of Edgemont was based upon mere speculation and was unsupported by evidence, and was further undermined by the hearing testimony of Daniel Bernstein discrediting her claim that he resided in the State of California.

The hearing session continued with the testimony of Clint Eller, who raised argument in opposition to the intentionally “misleading” practices employed by Amy Ferraro, as an employee of the private investigation agency which had been hired by the Town of Greenburgh to solicit signatures, in an effort to “dupe” him and his wife into signing an affidavit under false pretenses regarding fabricated defects in the process through which they had previously given their signatures in support of the Incorporation Petition, which would have lead them to falsely disavow the legitimacy of their signatures thereupon if they had not seen through the ruse being perpetrated by Ms. Ferraro and refused her exhortations to sign her proffered affidavit.

The next testimonial was submitted by Dominic Maister, who testified and raised argument in opposition to the objection submitted previously by respondent Linn during the preceding hearing session on April 5, 2017, stating that despite respondent Linn’s claim that the list of Regular Inhabitants within the Incorporation Petition should be disregarded due, in part, to the mistaken exclusion of him from same, he related that he had been properly excluded

therefrom due to his lack of United States citizenship and consequent ineligibility to vote for officials of the Town of Greenburgh.

The next testimonial was submitted by Jennifer DeMarrais, who testified and raised argument in opposition to the objection submitted previously on behalf of respondent Massena during the preceding hearing session on April 5, 2017, arguing that his objection to the effect that the boundaries of the proposed Village of Edgemont are not coterminous with the entire boundaries of a school, fire, fire protection, fire alarm town special, or town improvement district and the limits of the territory are not coterminous with parts of the boundaries of more than one school, fire, fire protection, fire alarm, town special, or town improvement district, of which all are wholly contained within such limits and within one town as required by Section 2-200 of the New York State Village Law, reflects a misapprehension of the applicable law. Specifically, Ms. DeMarrais argues that by Section 2-200 of the New York State Village Law requires only that the limits of the territory of a proposed village not contain more than five square miles pursuant to Section 2-200(1)(a) of the statute, or that it be either coterminous with the entire boundaries of a school, fire, fire protection, fire alarm, town special or town improvement district pursuant to Section 2-200(1)(b) of the statute, or that it be coterminous with parts of the boundaries of more than one school, fire, fire protection, fire alarm, town special or town improvement district, all of which are wholly contained within such limits and within one town pursuant to Section 2-200(1)(c) of the statute; rather than, as incorrectly argued by respondent Massena, requiring that all three of these elements be satisfied. Ms. DeMarrais continued by concluding that since the Incorporation Petition satisfies the requirement that the limits of the territory of the proposed Village of Edgemont not contain more than five square miles pursuant to Section 2-200(1)(a) of

the New York State Village Law, it is unnecessary that the Incorporation Petition also satisfy the above-referenced requirements of Sections 2-200(1)(b) and (1)(c) of the New York State Village Law, despite respondent Massena's argument to the contrary.

The next testimonial was submitted by Blair Connelly, who testified and raised argument in opposition to respondent Feiner's consideration of the testimony and documents submitted previously during the preceding hearing session on April 5, 2017 by two non-objectors, one of which was from an attorney hired by respondent Feiner, the other being a land surveyor hired by respondent Feiner, as both of these individuals resided outside of the Town of Greenburgh and were not qualified as objectors to the Incorporation Petition under the law. Mr. Connelly continued, arguing that he believed that respondent Feiner had acted outside of the parameters of his limited authority under Section 2-200 of the New York State Village Law when he (1) used public funds to hire private investigators to affirmatively and directly attempt to influence the process, (2) improperly solicited objections, (3) admitted into evidence the testimonial and documentary submissions of individuals whom he knew to be unqualified objectors since he had hired them to make their submissions during the hearing proceeding on April 5, 2017 without regard to their residency with the Town of Greenburgh, and (4) announced that he would permit additional objections to be submitted subsequent to the final session of hearing proceedings, thereby preventing meaningful response to same.

The hearing session continued with the testimony of Lisa Decker, who published the affidavit of Paulette Siegel, who raised argument in opposition to the circumstances arising on March 1, 2017 under which she was "tricked" by a woman employed by the Town of Greenburgh into signing an affidavit under false pretenses regarding fabricated defects in the process through

which she had previously given her signatures in support of the Incorporation Petition, which lead her to falsely disavow the legitimacy of her signature thereupon. Mr. Lewis precluded Ms. Decker from completing her publication of Paulette Siegel's affidavit due to her inability to assure him that she could finish with one more sentence, although he indicated that she might be able to speak a second time after waiting awhile.

The next testimonial was submitted by Michael Gavisser, who elected to utilize his opportunity to testify by completing the publication of Paulette Siegel's affidavit, which continued by expressing her significant displeasure with the respondent Feiner's utilization of "dirty underhanded tactics" to undermine and thwart the process by "tricking" residents into signing "phony objections," further submitting that doing so was morally and ethically wrong. Mr. Gavisser continued by testifying on his own behalf, stating that he simply wanted to have the opportunity for himself and all residents of the proposed Village of Edgemont to participate in a vote regarding incorporation.

The next testimonial was submitted by Charles Luband, who testified that he believed that the more than 1,400 petition signatures submitted with the Incorporation Petition were sufficient to satisfy the requirement that same be supported by the petition signatures of at least 20% of the residents of the proposed Village of Edgemont, even if respondent Feiner were to find it proper to exclude those signatures which were the subject of legitimate objections. Mr. Luband continued by further asserting that since the area proposed to constitute the Village of Edgemont was being based upon the boundaries of the Greenville Fire District which had been defined in the Greenville Fire District map submitted with the Incorporation Petition, he believed that the requisite common certainty had been established.

The hearing session continued with the testimony of Lawrence Cinamon, who published the affidavit of Craig Bernstein, relating that he disavowed the suggestion previously raised by someone residing outside of the area of the proposed Village of Edgemont to the effect that he did not support the right of Edgemont residents to have the opportunity to vote regarding incorporation.

The next testimonial was submitted by intervenor/respondent Bernstein, who testified and raised argument in opposition to the objections submitted previously by Steven Willard and John Martin during the preceding hearing session on April 5, 2017, arguing that their respective claims that the Edgemont School District and the Greenville Fire District are not coterminous is irrelevant to the sufficiency of the Incorporation Petition, as same is supported by the Greenville Fire District map which reflects the metes and bounds description approved by the Board of Supervisors of Westchester County on July 2, 1923, which provides the requisite common certainty required by the law.

Thereafter, Mr. Lewis published a part of the affidavit of Calvin Chin, which related argument in opposition to the circumstances arising on March 31, 2017 under which he was visited at his home by a woman named Amy who was carrying of copy of his signature page from the Incorporation Petition and claimed that she represented the Town of Greenburgh. Mr. Lewis then indicated that he was not going to read Mr. Chin's entire statement, and proceeded to read only the concluding sentence of his affidavit, wherein he stated that he wanted his signature upon the Incorporation Petition to be counted, despite the Town's efforts to thwart the process by "tricking" residents like him into signing "phony objections" which was morally and ethically wrong.

Respondent Feiner then directed that respondent Freitag be given another opportunity to testify, in addition to the opportunity she availed herself of as the ninth objector during the first hearing proceeding conducted on April 5, 2017, and she claimed that 1 signature upon the Incorporation Petition should be excluded due to that signatory's use of an initial for the first name without identifying which of the two residents of that household who bore the same first name it was attributable to, and she continued by claiming that another 1 signature upon the Incorporation Petition should be excluded because that resident lived at an address other than that set forth upon the list of Regular Inhabitants annexed as Exhibit B to the Incorporation Petition, that 5 unspecified signatures should be excluded as those signatories had asked that they be removed from the Incorporation Petition, that 27 other signatures should be excluded because they appeared twice on the Incorporation Petition, that 145 signatures should be excluded because their names do not appear on the list of Regular Inhabitants annexed as Exhibit B to the Incorporation Petition, that the 5 signatures appearing on two distinct pages of the Incorporation Petition should be excluded because there is no header on those two signature pages, that some additional signatures should be excluded because those people printed their names or used their initials to sign the Incorporation Petition rather than using a cursive signature, and she concluded by stating that there are 6 additional signatures which should be excluded because she believed they were suspicious and inconsistent with the signatures on file with the Westchester County Board of Elections. In conclusion, Ms. Freitag argued that a total of 862 signatures appearing on the Incorporation Petition should be excluded, which would include the above-referenced signatures and all of the signatures of those people whose signatures were witnessed by the two individuals whom she believed had falsely attested to the signatures of those she believed to be

suspicious.

Respondent Feiner then directed that respondent Linn be given a second opportunity to testify, in addition to the opportunity she availed herself of as the first objector during the first hearing proceeding conducted on April 5, 2017, and she summarized her second affidavit by stating that the Incorporation Petition should be deemed invalid because the list of Regular Inhabitants submitted with the Incorporation Petition, containing the names of 4,825 people, failed to comply with the requirements of Section 2-200 of the New York State Village Law in that she believed this list had been compiled to reflect inhabitants who are qualified to vote rather than merely regular inhabitants.

Thereafter, a brief question was asked by respondent Payson, who sought to confirm that the Greenburgh Town Attorney had received his affidavit and supporting information, which Mr. Lewis confirmed. Following respondent Payson, Mr. Lewis published the affidavit of respondent Nancy Blank as the sixteenth objector, relating that she attended a meeting hosted by the Edgemont Incorporation Committee (EIC) on October 6, 2016, when she was told by either an unidentified person, or unidentified people, that the territory of the proposed Village of Edgemont would be defined by the boundaries of the Greenville Fire District, but that it was her understanding that the EIC had stated at a previous meeting that such territory would be defined by the boundaries of the Edgemont School District. Subsequently, Michele McNally complained that she had not received a copy of respondent Payson's affidavit despite having requested it that afternoon, and indicated that she would be seeking to obtain copies of all submitted affidavits and documents including those submitted by the licensed surveyor and attorney who offered testimony during the first hearing session conducted on April 5, 2017, submitting that she

believed that neither of them were residents of the Town of Greenburgh. In response, Mr. Lewis confirmed and acknowledged that neither of those two individuals were residents of the Town of Greenburgh. Thereafter, Jeff Sherwin asked Mr. Lewis when he had received the affidavits submitted by respondent Nancy Blank and Ward Carpenter, as well as the affidavits he published at the beginning of the meeting, which prompted Mr. Lewis to indicate that he had received respondent Payson's documents at 9:00 AM that morning, and that he had received the title documents between 2:00 PM and 4:00 PM that afternoon, but had not been able to bring them to the Clerk's Office by 4:00 that afternoon for distribution to interested parties who had been requesting them. When Mr. Sherwin complained about Mr. Lewis' failure to do so, Mr. Lewis responded by claiming that neither he, nor respondent Feiner believed that Mr. Sherwin had any legal right to see them anyway.

The next speaker, Howard Hirsch, stated that he was confused as to the explanation provided for Mr. Lewis' failure to publish respondent Payson's affidavit at the beginning of the hearing that evening. Following Mr. Hirsch, Don Cannon spoke and complained that he had been bullied and assaulted by Mr. Hirsch, and suggested that others had been bullied as well.

Additional testimony was then submitted by intervenor/respondent Bernstein, who criticized respondent Feiner's decision to permit objectors to offer new testimony and evidence during that evening's hearing proceeding, in addition to the opportunities which they had availed themselves of as objectors during the first hearing proceeding conducted on April 5, 2017, due to the resulting inability of responses to be made thereto due to the closing of evidence the following day. In addition, intervenor/respondent Bernstein criticized respondent Feiner's expenditure of Greenburgh Town funds to hire several individuals, including respondents Steven

Willard and William Stanton, to present evidence during the hearing proceedings despite knowing that they were neither residents, nor qualified objectors.

Lastly, the hearing session concluded with the testimony of John McCarthy, who related that, contrary to any allegation otherwise, he experienced no intimidation or oppression during any of the EIC meetings conducted previously, and that he believed that any suggestion otherwise was reprehensible.

It appears from the record presented, that additional affidavits and documentary materials were submitted to respondent Feiner throughout the day on April 25, 2017 until approximately 4:45 PM, although no record of the identity of those materials nor the time of their submission is related by respondent Feiner. Respondent Feiner subsequently issued a written decision dated May 5, 2017, as filed with the Greenburgh Town Clerk on May 9, 2017, which he indicated therein was based upon hearing testimony taken on April 5, 2017 and April 24, 2017, as well as 55 exhibits which he had received in evidence, specifically excluding the April 5, 2017 hearing session testimony and documentary material submitted by William Stanton of Stanton, P.I., which served to formally reject the Incorporation Petition upon citation to three distinct enumerated grounds (hereinafter, the challenged decision). Specifically, respondent Feiner's challenged decision reflected his determinations that the Incorporation Petition failed to describe the territory of the proposed Village of Edgemont with the requisite "common certainty" within the meaning of Village Law § 2-202(c)(1), that the Incorporation Petition failed to reflect the signatures of 20 percent of the residents of the proposed Village of Edgemont as required by Village Law § 2-202(1)(a)(1), and that the Incorporation Petition failed to include an adequate list of the regular inhabitants of the proposed Village of Edgemont as required by Village Law §

2-202(c)(2). In addition, respondent Feiner's challenged decision reflected his determination that the challenges raised to the legal sufficiency of the Incorporation Petition pursuant to Village Law § 2-202(b)(6), which requires that "[e]ach page of the petition and all exhibits and certifications shall be securely fastened together", were not valid. More specifically, respondent Feiner's challenged decision reflected his reasoning for finding that the challenges raised pursuant to Village Law § 2-202(b)(6) were invalid, as he related therein that "the petition and the exhibits and certifications were all 'securely fastened together' when the petition was submitted", and that the evidence proffered by respondents Janet Linn and Thomas Blank in an effort to demonstrate otherwise was insufficient.

In support of his determination within the challenged decision that the Incorporation Petition failed to describe the territory of the proposed Village of Edgemont with the requisite "common certainty" within the meaning of Village Law § 2-202(c)(1), respondent Feiner cited to his determination that the legal description of the boundaries of the area of the proposed Village of Edgemont set forth in the Incorporation Petition were inconsistent because he could not determine from that description whether between 9 and 11 parcels of real property were within or without the boundaries of the proposed Village of Edgemont. Respondent Feiner related that he reached this conclusion in reliance upon the testimony and evidence proffered by John M. Martin, Esq.,<sup>5</sup> which is then referenced by respondent Payson in his own affidavit and testimony which were admitted into evidence, where he submitted that there is a discrepancy between the

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<sup>5</sup>The record reveals that John M. Martin, Esq., was not a qualified objector within the meaning of Village Law § 2-204 due to his status as a non-resident of the Town of Greenburgh, but rather was paid by respondent Feiner to make his proffer of testimony and submit an evidentiary affidavit during the hearing proceedings conducted on April 5, 2017.

Incorporation Petition's annexed map of the Greenville Fire District and that of the School District Number 6 which pertains to between 9 and 11 tax parcels on Vandelay Court and Hearthstone Circle. Although respondent Paul Feiner acknowledges within the challenged decision that he understands that the proponents of the Incorporation Petition intended to describe the boundaries of the area of the proposed Village of Edgemont as being defined by the boundaries of the Greenville Fire District through reference to the map of same annexed to the Incorporation Petition, respondent Feiner nonetheless stated that he found the description of the proposed Village of Edgemont to be inconsistent, and upon that basis found that the Incorporation Petition failed to describe that area with "common certainty" as required by Article 2 of the Village Law.

In support of his determination within the challenged decision that the Incorporation Petition failed to reflect the signatures of 20 percent of the residents who are qualified to vote in the proposed Village of Edgemont as required by Village Law § 2-202(1)(a)(1), respondent Feiner therein cites first to his determination that there are 5,993 qualified voters residing in the area of the proposed Village of Edgemont, and next cites to his determination that the Incorporation Petition is supported by only 1,021 valid signatures, thereupon relating his conclusion that the Incorporation Petition is 177 signatures short of the required 20 percent total of 1,198 signatures needed. In support of his determination that the Incorporation Petition is supported by only 1,021 valid signatures, respondent Feiner indicates that he invalidated a total of 296 signatures by first invalidating 3 total signatures from the Incorporation Petition based upon respondent Cort's objection to the omission of a prefatory statement on pages 117 and 120 thereof. In further support of his determination that the Incorporation Petition is supported by

only 1,021 valid signatures, respondent Feiner indicates that he invalidated a total of 290 signatures from the Incorporation Petition based upon respondent Freitag's objections, including those she raised against the legitimacy of Craig Bernstein's signatures appearing on pages 169 and 182 of the Incorporation Petition because respondent Feiner found that Mr. Bernstein failed to dispute respondent Freitag's claim that both of his signatures were fraudulent. In this regard, respondent Feiner further indicates within his challenged decision that he invalidated all of the 271 signatures from the Incorporation Petition which were witnessed by intervenor/respondent Aubrey Graf Daniels and Alix M. Brown upon his adoption of respondent Freitag's argument that since she believed that intervenor/respondent Daniels and Ms. Brown had falsely sworn that each of them had witnessed Craig Bernstein's signatures upon pages 169 and 182 of the Incorporation Petition, respectively, then it was proper to conclude on that basis that all of the signatures within the Incorporation Petition which were witnessed by either intervenor/respondent Daniels or Ms. Brown are illegitimate and must be excluded from the Incorporation Petition.

Respondent Feiner continues and indicates within his challenged decision that he also invalidated all of the signatures which were witnessed by David DiPietto from the Incorporation Petition, upon his adoption of respondent Freitag's argument that since she believed that the signatures of Michele Lazar and Abbe Lazar appearing on page 233 of the Incorporation Petition were fraudulent because she didn't think they matched the signatures of these two individuals on file with the Westchester County Board of Elections closely enough, then it was proper to conclude on that basis that all 17 of the signatures within the Incorporation Petition which were witnessed by Mr. DiPietto are illegitimate and must be excluded from the Incorporation Petition.

Finally, respondent Feiner indicates within his challenged decision that he invalidated all of the signatures which were witnessed by Alisa Strauss from the Incorporation Petition, upon his adoption of respondent Freitag's argument that since she believed that the signature of Sophie Strauss appearing on page 5 of the Incorporation Petition was fraudulent because she didn't think it matched the signature of this individual on file with the Westchester County Board of Elections closely enough, then it was proper to conclude on that basis that all 3 of the signatures within the Incorporation Petition which were witnessed by Ms. Strauss are illegitimate and must be excluded from the Incorporation Petition.

Upon making these findings within the challenged decision regarding the illegitimacy of the above-referenced signatures from the Incorporation Petition, respondent Feiner excluded a total of 296 of the grand total of 1,317 signatures proffered in support of the Incorporation Petition, which lead him to conclude that the Incorporation Petition contained 1,021 valid signatures, which was less than the 1,198 signatures needed to constitute 20 percent of the total number of 5,993 residents whom he believed are qualified to vote in the proposed Village of Edgemont. Thereupon, respondent Feiner reached the determination within the challenged decision that the Incorporation Petition failed to reflect the signatures of 20 percent of the residents who are qualified to vote in the proposed Village of Edgemont as required by Village Law § 2-202(1)(a)(1).

In support of his determination within the challenged decision that the Incorporation Petition failed to include a reasonably accurate list of "regular inhabitants" of the proposed Village of Edgemont as required by Village Law § 2-202(1)(c)(2), respondent Feiner set forth therein that he believes that there are "approximately 5,993 registered voters" residing within the

area of the proposed Village of Edgemont, and then postulated that since the Incorporation Petition is supported by an affidavit which relates that there are “4,826 regular inhabitants” residing within the area of the proposed Village of Edgemont who are qualified to vote, the Incorporation Petition is impermissibly imprecise in that he believed “[t]here must, therefore, be significantly more ‘regular inhabitants’ of the territory proposed to be incorporated than there are registered voters” because at least some of these registered voters have children who are properly counted as “regular inhabitants” under the law. Specifically, respondent Feiner concluded upon this reasoning that the list of “4,826 regular inhabitants” alleged within the Incorporation Petition to reside within the area of the proposed Village of Edgemont “is clearly inaccurate,” and upon that basis, determined that the list of “regular inhabitants” within the Incorporation Petition “cannot constitute the ‘strict compliance’ with the statutory requirement that is necessary.”

By this Court’s Decision, Order and Judgment, filed and entered on February 1, 2018, this Court determined that the proffered forms of proof annexed to the Incorporation Petition as Exhibit A, including both the 1923 metes-and-bounds description of the Greenville Fire District and the 1934 map depicting the boundaries of the Greenville Fire District, satisfied the strict compliance standard applied by the Appellate Division, Second Department to the format requirements of Village Law § 2-202(1)(c)(1)(a)-(c), and that it had also described the territory of the proposed Village of Edgemont in a manner sufficient to identify the location and extent of the boundaries of same with “common certainty” pursuant to Village Law § 2-202(1)(c)(1), which lead this Court to reverse respondent Feiner’s conclusion that the Incorporation Petition had failed to describe the territory of the proposed Village of Edgemont with “common certainty” within the meaning of Village Law § 2-210(1) based upon the Court’s conclusion that respondent

Feiner's determination in this regard was not supported by sufficient evidence and was otherwise also contrary to the weight of the evidence.

By this Court's Decision, Order and Judgment under Index No. 58977/17, filed and entered on February 1, 2018, this Court further determined that respondent Feiner had reached his conclusion within the challenged decision that the Incorporation Petition failed to reflect the signatures of 20% of the residents who are qualified to vote in the proposed Village of Edgemont as required by Village Law § 2-202(1)(a)(1) based upon his erroneous rejection of the proffer made within the Incorporation Petition that there were a total of 4,827 residents of the proposed Village of Edgemont who were qualified to vote for officers of the Town of Greenburgh, and upon his erroneous invalidation of 291 signatures from the Incorporation Petition, both of which he mistakenly relied upon as the basis for his determination that the Incorporation Petition failed to reflect the signatures of 20% of the residents who are qualified to vote in the proposed Village of Edgemont as required by Village Law § 2-202(1)(a)(1), which lead this Court to reverse respondent Feiner's conclusion in this regard upon determining that it was illegal, that it was not supported by sufficient evidence, and that it was otherwise also contrary to the weight of the evidence.

By this Court's Decision, Order and Judgment under Index No. 58977/17, this Court further determined that respondent Feiner's determination within the challenged decision that the Incorporation Petition was not supported by an attached list of the names and addresses of the regular inhabitants of the territory of the proposed Village of Edgemont as required by Village Law § 2-202(1)(c)(2) was erroneous, as this Court found that the Incorporation Petition had satisfied the requirements of Village Law §§ 2-200(1), 2-202(1)(b)(3) and 2-202(1)(c)(2), and

that the proffered list annexed to the Incorporation Petition as Exhibit B - bearing the names and addresses of 4,827 regular inhabitants - reflected a satisfactory allegation that the proposed Village of Edgemont contains a population of at least 500 regular inhabitants, and represents an adequately complete and accurate list of such regular inhabitants in compliance with the requirements of Village Law §§ 2-200(1), 2-202(1)(b)(3) and 2-202(1)(c)(2), which lead this Court to find that respondent Feiner's determination in this regard was illegal, was not supported by sufficient evidence, and was otherwise also contrary to the weight of the evidence, and thereupon reversed same.

By this Court's Decision, Order and Judgment under Index No. 58977/17, this Court also determined that there were no sustained objections to the Incorporation Petition and held that the challenged decision made by respondent Feiner in his capacity as the Town Supervisor of the Town of Greenburgh, dated May 5, 2017, which denied the Incorporation Petition filed on behalf of those residents of the Town of Greenburgh who were seeking the legal authority to conduct a referendum regarding the potential creation of the incorporated Village of Edgemont from within the Town of Greenburgh pursuant to Article 2 of the Village Law was thereby reversed, vacated and annulled. By this same Decision and Order, this Court also issued a declaratory judgment that the Incorporation Petition is compliant with all requirements of Article 2 of the Village Law. By this same Decision, Order and Judgment, this Court further ordered that the Town Clerk of the Town of Greenburgh comply with the terms of Village Law §§ 2-212, 2-214, 2-218 and 2-220 and undertake all actions necessary, pursuant to the authority and obligations appearing thereunder, to schedule an election to determine the question of incorporation no later than 40 days from the date of filing of that Decision, Order and Judgment, in order to permit each

resident of the proposed Village of Edgemont who is qualified to vote for town officers of the Town of Greenburgh, to exercise their individual statutory right to vote and thereby determine whether the proposed Village of Edgemont shall become the incorporated Village of Edgemont pursuant to the provisions and authority of Article 2 of the Village Law.

### Conclusions of Law

Upon consideration of a motion to dismiss brought pursuant to CPLR 3211, it is well-settled that the reviewing court's examination of the pleadings upon such a motion are to be liberally construed, that the factual allegations raised therein must be accepted as true, and that every favorable inference possible must be afforded to the petitioner (*see Nonnon v City of New York*, 9 NY3d 825; *see also Lawrence v Miller*, 11 NY3d 588; *Leon v Martinez*, 84 NY2d 83, 87), as the court's sole inquiry shall concern whether the facts alleged fit within any cognizable legal theory, irrespective of the level of evidentiary support proffered (*see People v Coventry First LLC*, 13 NY3d 758). However, the Court also recognizes that "bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration" (*Lutz v Caracappa*, 35 AD3d 673, 674, quoting *Daria v Masucci*, 230 AD2d 764, 765).

Turning initially to consider the intervenor/respondents' amended pre-answer motion to dismiss the instant proceeding pursuant to the mootness doctrine which is raised upon the allegation that the relief sought by the petitioners through the instant proceeding has already been achieved through the resolution of the article 78 proceeding brought by the intervenor/respondents under Index No. 58799/17, the Court notes that where the relief that is

sought through a pending CPLR Article 78 proceeding has already been achieved, the petition may properly be denied under the mootness doctrine (*see Matter of Oliver v Gross*, 121 AD3d 1116; *see Matter of Medina v New York State Dept of Correctional Services*, 43 AD3d 1236). In this regard, “[i]t is a fundamental principle of our jurisprudence that the power of a court to declare the law only arises out of, and is limited to, determining the rights of persons which are actually controverted in a particular case pending before the tribunal . . . [t]his principle, which forbids courts to pass on academic, hypothetical, moot, or otherwise abstract questions, is founded both in the constitutional separation-of-powers doctrine, and in the methodological strictures which inhere in the decisional process of a common-law judiciary” (*Hearst Corp. v Clyne*, 50 NY2d 707, 713).

“Typically, the doctrine of mootness is invoked where a change in circumstances prevents a court from rendering a decision that would effectively determine an actual controversy” (*Matter of Dreikausen v Zoning Bd. of Appeals of City of Long Beach*, 98 NY2d 165, 172; *see Matter of Citineighbors Coalition of Historic Carnegie Hill v New York City Landmarks Preserv. Comm.*, 2 NY3d 727, 728-729). Indeed, under the mootness doctrine, a court is ordinarily precluded from considering questions “which, although once live, have become moot by the passage of time, or a change in circumstances” (*Hearst Corp. v Clyne*, 50 NY2d 707, 714). Therefore, it is understood that an article 78 proceeding becomes moot (unless it falls within one of the articulated exceptions to the mootness doctrine which are not raised in this matter) when the relief requested is either impossible to grant or wholly untenable (*see Matter of E.W. Tompkins Co. v Board of Trustees of Clifton Park-Halfmoon Public Library*, 27 AD3d 1046; *see also La Corte Electric Construction and Maintenance, Inc. v County of Schoharie*, 190 AD2d 899;

*Harbour v Riedell*, 172 AD2d 920). Consequently, where the circumstances have changed in such a manner that the rights of the parties can no longer be affected by a judicial determination, the pending proceeding through which those questions are raised is thereby rendered moot and will properly be denied consideration by the courts upon that basis (*see Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, 810-811; *see also Matter of Raven K.*, 130 AD3d 622).

Here, it is fully evident from the record of these proceedings which includes the verified petition, amended verified petition and all papers subsequently submitted by the petitioners in support thereof, that the ultimate relief sought by the petitioners through the instant CPLR article 78 proceeding is the annulment of the challenged decision rendered by respondent Feiner in his capacity as the Town Supervisor of the Town of Greenburgh, dated May 5, 2017. It is further evident from this record, that the sole ground upon which the petitioners seek the annulment of the challenged decision relates to their challenge to the legal sufficiency of the Incorporation Petition upon the alleged failure of respondent Feiner to properly determine therein whether each page of the Incorporation Petition had been securely fastened together with all exhibits and certifications pursuant to the requirements of Village Law § 2-202(b)(6). Of note, the petitioner's proffered ground regarding the proper fastening of pages was not one of the issues raised in the article 78 proceeding brought under Index No. 58799/17, yet it is uncontroverted by all parties to this proceeding that the previously filed article 78 proceeding brought under Index No. 58799/17 also sought the annulment of respondent Feiner's challenged decision - albeit upon three grounds which are distinct from the sole ground raised by the petitioners here. It is further undisputed by the parties and significant to note that by this Court's Decision, Order and

Judgment, filed and entered on February 1, 2018, this Court granted the petition for relief sought by the petitioners in the previously filed article 78 proceeding brought under Index No. 58799/17, and thereby reversed, vacated and annulled the challenged decision made by respondent Feiner to deny the Incorporation Petition, and further issued a declaratory judgment that the Incorporation Petition is compliant with all requirements of Article 2 of the Village Law upon finding that there were no sustained objections to the Incorporation Petition.

Furthermore, despite the arguments raised by the petitioners and respondent Linn to the contrary, it is uncontrovertible that the petitioners have already received the ultimate relief that they were seeking through this proceeding by the mere passage of time which provided this Court with an opportunity to reach the merits of, and ultimately grant the petition for relief brought under a previously filed CPLR article 78 proceeding which had challenged the very same decision rendered by respondent Feiner in his capacity as the Town Supervisor of the Town of Greenburgh, dated May 5, 2017, to deny the Incorporation Petition. Stated succinctly, as the challenged decision has already been reversed, vacated and annulled by this Court, that is to say it has otherwise been invalidated, nullified, voided, revoked, reversed and rescinded, there is nothing remaining for this Court to examine anew - irrespective of the desires of those parties who seek the review of the same determination on their own proffered grounds through the proceeding they had commenced. In sum, this Court is not in the business of expending limited judicial resources to satisfy the unreasonable desires of parties who got what they wanted, but did not get it the way that they wanted it. Therefore, although the petitioners and respondent Linn have opposed the intervenor/respondents' mootness argument, and have thereby urged this Court to now again consider the legality of the challenged decision rendered by respondent Feiner to

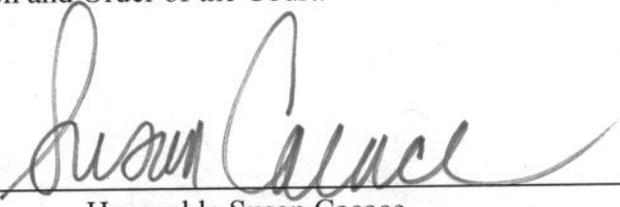
deny the Incorporation Petition upon the sole ground that they have raised, despite their appreciation of the fact that this Court has already reversed, vacated and annulled that very challenged decision upon other grounds which they did not raise, brushes dangerously close to the sanctionable dogged pursuit of litigation for purposes which are other than the legitimate challenge to governmental action permitted pursuant to article 78 of the CPLR. Consequently, as the petitioners have already received the ultimate relief that they were seeking through this proceeding by virtue of this Court's previous determination to reverse, vacate and annul respondent Feiner's challenged decision to deny the Incorporation Petition under a parallel CPLR article 78 proceeding under Index No. 58799/17, this Court is compelled to conclude that this proceeding has been rendered moot thereby, as any ruling upon the instant petition would have no immediate and/or practical consequences upon the rights of any party to this proceeding and the matter is not otherwise subject to an exception to the mootness doctrine (*see Saratoga County Chamber of Commerce v Pataki*, 100 NY2d at 810-811; *see also Matter of Raven K.*, 130 AD3d 622; *Truscott v Albany Board of Zoning Appeals*, 152 AD3d 1038; *Matter of Colon v Annucci*, 151 AD3d 1061).

Accordingly, since the petitioners have already been afforded the relief that they sought through the instant petition, that is the annulment of respondent Feiner's challenged decision to deny the Incorporation Petition, the challenge raised through this proceeding to the legality of that challenged decision has been rendered academic and this proceeding must properly be dismissed as moot (*see Majid v Coughlin*, 216 AD2d 299).

Based upon the foregoing, the intervenor/respondents' joint motion to dismiss the instant petition pursuant to CPLR 3211(a)(7) is hereby granted, and therefore, this proceeding is hereby dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York  
April 23, 2018



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Honorable Susan Cacace  
Acting Justice of the Supreme Court

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