

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

562

OP 17-01942

PRESENT: WHALEN, P.J., SMITH, CARNI, CURRAN, AND TROUTMAN, JJ.

IN THE MATTER OF CITY COUNCIL OF CITY OF
JAMESTOWN, PETITIONER,

V

MEMORANDUM AND ORDER

TOWN COUNCIL OF TOWN OF ELLICOTT AND BOARD OF
TRUSTEES OF VILLAGE OF FALCONER, RESPONDENTS.

FALCONER CENTRAL SCHOOL DISTRICT,
INTERVENOR-RESPONDENT.
(PROCEEDING NO. 1.)

BOND SCHOENECK & KING, PLLC, SYRACUSE (STEPHANIE M. CAMPBELL OF
COUNSEL), FOR PETITIONER.

HARRIS BEACH PLLC, BUFFALO (PIETRA G. ZAFFRAM OF COUNSEL), FOR
RESPONDENTS AND INTERVENOR-RESPONDENT.

Proceeding pursuant to General Municipal Law article 17
(initiated in the Appellate Division of the Supreme Court in the
Fourth Judicial Department pursuant to General Municipal Law § 712)
for a declaration that a proposed annexation of land to the City of
Jamestown is in the over-all public interest.

It is hereby ORDERED that said petition is unanimously dismissed
without costs.

Memorandum: In an original proceeding pursuant to General
Municipal Law § 712, the City Council of City of Jamestown
(petitioner) seeks a determination that the proposed annexation of
approximately four acres of land located in the Town of Ellicott and
the Village of Falconer is in the over-all public interest. In a
separate proceeding pursuant to CPLR article 78 and General Municipal
Law § 711 (3), the City of Jamestown (City) seeks to annul
respondents' respective determinations that the City's annexation
petition failed to comply with the provisions of General Municipal Law
article 17. The article 78 proceeding was transferred to this Court
by order of Supreme Court, and we consolidated it with the original
proceeding (see General Municipal Law § 712 [3]).

We agree with respondents that petitioner's original proceeding
is untimely. The General Municipal Law allows for an original
proceeding to be brought in the Appellate Division "[i]n the event
that one or more but not all of the governing boards of the affected

local governments shall determine that it is not in the over-all public interest to approve the proposed annexation" (§ 712 [1]). The proceeding must be brought "within thirty days after the filing in the office of the county clerk of the order by which such determination was made" (§ 712 [2]; see also § 711 [5]). Here, petitioner seeks review of respondents' orders, each of which determined that annexation was not in the over-all public interest and each of which was filed in the office of the Chautauqua County Clerk on September 13, 2017. Petitioner's original proceeding, commenced on November 8, 2017, was therefore untimely.

Contrary to petitioner's contention, General Municipal Law § 712 (2) does not require that the governing boards of all of the affected local governments must have filed their respective orders in the office of the county clerk in order to trigger the 30-day period. Instead, by its terms, the limitations period commences upon the filing of "*the order* by which such determination [that annexation is not in the overall public interest] was made" (*id.* [emphasis added]). Contrary to petitioner's further contention, section 712 did not require either respondent to notify petitioner that such an order had been filed with the county clerk in order to begin the 30-day period.

We therefore dismiss the petition in the original proceeding as untimely. Because we dismiss the petition in the original proceeding, i.e., the proceeding by which review can be had of respondents' determinations that annexation is not in the public interest, we dismiss the City's CPLR article 78 petition as academic. In light of our determination, we do not address petitioners' remaining contentions.