

**Matter of City of Jamestown v Town Council of the
Town of Ellicott**

2020 NY Slip Op 34760(U)

November 23, 2020

Supreme Court, Chautauqua County

Docket Number: Index No. EK1-2020-000529

Judge: Lynn W. Keane

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At a term of the Supreme Court of State of New York, held in and for the County of Chautauqua, 3 North Erie Street, Mayville, NY held on the 23rd day of November 2020.

PRESENT: HON. LYNN W. KEANE, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CHAUTAUQUA

In the Matter of Application of,

CITY OF JAMESTOWN,

Petitioner,

**SECOND AMENDED
DECISION AND ORDER
INDEX NO. EK1-2020-000529**

-against -

**TOWN COUNCIL OF THE TOWN OF ELLICOTT
and BOARD OF TRUSTEES OF THE
VILLAGE OF FALCONER,**

Respondents.

**For an Order and Judgment Pursuant to
Article 78 of the Civil Practice Law and Rules**

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PROCEDURAL HISTORY

Petitioner, City of Jamestown, (“the City”), commenced this action under Article 78 for a final Order and Judgment: (a) vacating and annulling the determinations of the respondents, Town Council of the Town of Ellicott (“the Town”) and Board of Trustees of the Village of Falconer (“the Village), collectively referred to as the “Respondents,” that found the City’s petition for annexation dated November 25, 2019 (the “Annexation Petition”) did not comply with the statutory form and content requirements of Article 17 of the General Municipal Law; (b) declaring that the Annexation Petition

complies in form and content with the provisions of Article 17 of the General Municipal Law; and (c) granting such other and further relief as the Court may deem just, proper and equitable, together with Petitioner's costs and disbursements.

Respondents submitted a Verified Consolidated Answer and Memorandum in Opposition to the Petition.

On November 25, 2019 the City Council of the City of Jamestown was presented with the Annexation Petition, which proposed to annex to the City approximately four (4) acres of land in the Town and Village owned by the City, through its Board of Public Utilities ("BPU") and a portion of another parcel owned by National Grid, which is leased by the City's BPU and on which the City's BPU owns all of the improvements. The Petition was dated November 25, 2019 and signed by Mayor Samuel Teresi. It included two schedules: Schedule A is the description of the parcel of land to be annexed by the City; and Schedule B is the affidavit of Kevin Okerlund, assessor for the Town of Ellicott.

Pursuant to the provisions of the Municipal Annexation Law, on December 30, 2019, the City Council, Town Council and Village Board held a joint public hearing regarding the proposed Annexation.

On February 24, 2020, the City Council passed Resolution No. 202002A25, setting forth its findings and fact and conclusions with respect to the Annexation Petition, resolving to issue an Order approving of the proposed annexation. On March 23, 2020, the City Council adopted its order approving the Annexation Petition.

On March 16, 2020, in accordance with General Municipal Law §711(2)(a), the Town Council issued its Findings, Objections and Determinations and a written Order denying the Proposed Annexation.

On March 20, 2020, in accordance with General Municipal Law §711(2)(a), the Village Board also issued its Findings, Objections and Determinations and a written Order denying the Proposed Annexation.

Pursuant to the Town Order and Village Order, Respondents determined that the Annexation Petition did not substantially comply in form and content with the provisions of the Annexation Law in that: (1) the Proposed Annexation property does not adjoin the City's boundaries within the meaning of General Municipal Law §703(1), and (2) the assessor's certificate attached to the Annexation Petition is deficient.

Petitioner now brings this Article 78 Proceeding, challenging the portions of the Town Order and Village Order finding that the Annexation Petition did not substantially comply in form and content with the provision of the Annexation Law.

ISSUE PRESENTED

At issue is whether Respondents' Orders determining that the Annexation Petition does not comply in form and content with the requirements of the Municipal Annexation Law ought to be vacated and annulled on the grounds that the determinations were arbitrary, capricious, or affected by errors of law. CPLR §7803(3).

It is well-settled law that a Court may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion. Ajomar Transp., Inc. v Nassau County Dept. of Soc. Servs., 299 AD2d 479, 481 (2d Dept. 2002). Matter of Non-Emergency Transporters of New York, Inc., et. al., v Hammons, et al., 249 AD2d 124, 127-128 (1st Dept. 1998). (“The ‘arbitrary and capricious’ test chiefly concerns whether a particular action should have been taken or was justified, with a consideration of whether the administrative action taken is supported by the facts as presented in the administrative process”). An agency action is “arbitrary and capricious” if it is taken “without sound basis in reason and ... without regard to facts.” Matter of Pell v. Bd. Of Ed., 34 N.Y. 2d 222, 231-232 (1975).

The Municipal Annexation Law provides, in part:

Territory in one or more local governments adjoining one or more other local governments may be annexed to the latter pursuant to the provisions of this article. A petition for such annexation, describing the territory, stating the approximate number of inhabitants thereof, and signed... by the owners of a majority in assessed valuation of the real property in such territory assessed upon the last preceding assessment roll of, or utilized by, the local government or governments in which it is situated, may be presented to the governing board or boards of the affected local government or governments in which such territory is situated and a certified copy or copies thereof to the governing board or boards of the local government or governments to which it is proposed to annex such territory.
General Municipal Law §703(1).

Where a petition for annexation of a territory has been presented pursuant to §703 of the Municipal Annexation Law, the governing board of the local government to which the territory is proposed to be annexed and the governing board of the local government in which the territory is currently situated are required to notice and conduct a joint public hearing on the petition. General Municipal Law §704, §705. At the joint public hearing, the governing boards of the affected municipalities are required to “hear any testimony and receive any evidence and information which may be presented” concerning, among other things, the petition’s compliance with the statutory form and content requirements of the Municipal Annexation Law. General Municipal Law §705.

Within 90 days of the joint public hearing on a petition for annexation, the Municipal Annexation Law requires the governing board of each affected municipality to adopt a resolution that includes the board’s findings with respect to the petition’s compliance with the statutory form and content requirements.

General Municipal Law §711 (2) (a).

ANALYSIS

In evaluating whether the determinations reached by Respondents and reflected in their orders declaring the Annexation Petition does not comply in form and content with the requirements of the Municipal Annexation Law, it is necessary to examine whether the determinations by the Town and Village were reached “without sound basis in reason and ... without regard to facts.” Matter of Pell v. Bd. Of Ed., 34 N.Y. 2d 222, 231-232 (1975).

Respondents determined that the City’s Annexation petition fails to comply with the form and content requirements of the Municipal Annexation Law on two distinct grounds: (1) the property in question does not adjoin the City as required in NY General Municipal Law §710(1) and, (2) the

certificate of assessor Kevin Okerlund dated November 26, 2019, does not comply with General Municipal Law §703.

RESPONDENTS' DETERMINATION THAT THE PROPERTY DOES NOT ADJOIN THE CITY
AS REQUIRED BY GENERAL MUNICIPAL LAW §703(1)

Respondents contend that the property proposed for annexation “does not adjoin the City,” and therefore does not satisfy the contiguity requirement of the Municipal Annexation Law. It is argued that the presence of a county road, Tiffany Avenue, which is maintained by the Village, acts as a barrier between and prevents BPU parcels from adjoining the City. In reaching this conclusion, Respondents rely upon a County Tax map to suggest that Tiffany Avenue, a public highway, created a “divide” or area of discontinuity between the City boundary and the BPU parcel, which spans between “the City boundary at the centerline of Tiffany Avenue and the eastern boundary of Tiffany Avenue.”

In making this argument, Respondents ignore the fact that the property proposed for annexation extends to the centerline of Tiffany Avenue, where it adjoins the City's existing municipal boundary, and not the BPU parcel.

Schedule A to the Annexation petition contains both a metes and bounds description of the property and the following provision:

ALSO, all right, title and interest into those lands situate between the westerly bounds of the above described premises, being the easterly line of Tiffany Avenue and the centerline of Tiffany Avenue.

Significantly, the first paragraphs in the both the Order from the Town dated March 16, 2020 and the Order from the Village dated March 20, 2020 describe the proposed parcel of annexation as including portions of land extending from the westerly bounds of tax parcel number 371.14-1-22.1 and “the centerline of Tiffany Avenue.”

Petitioner has demonstrated that the property proposed to be annexed adjoins the City and satisfies the contiguity requirement of the Municipal Annexation Law. Tiffany Avenue does not act as a barrier. The property proposed to be annexed, described in detail in the Schedule A and the Orders prepared by Respondents, runs to the centerline of Tiffany Avenue. Tiffany Avenue is simply a portion of the property proposed for annexation to the City and not “separate and apart” from the Town and Village. See Matter of Common Council of the City of Gloversville v Town Bd. Of the Town of Johnstown, 32 NY 2d 1 [1973].

RESPONDENTS' DETERMINATION THAT THE ASSESSOR'S CERTIFICATE ATTACHED TO
THE ANNEXATION PETITION DOES NOT SATISFY THE REQUIREMENTS OF §703(3)

Respondents' determination faults the adequacy of the affidavit supplied by Mr. Okerlund for two reasons. First, Respondents challenge the validity of the affidavit under §703(3) because nowhere in the Assessor Certification does Mr. Okerlund expressly state that the property proposed for annexation extends to the centerline of Tiffany Avenue. Yet, he does clearly refer to “the real property described in Schedule A of the Petition for Annexation,” and this description is more than adequate under the statute.

Next, Respondents' allege the affidavit fails to satisfy the requirements of NY General Municipal Law §703 because paragraph 4 leaves it unclear whether the total assessed values set forth in the

schedule are for the last assessment roll. It is not clear why Respondents seek to view the 4th paragraph of the affidavit in a vacuum. Paragraph 2 clearly states that the real property in Schedule A “consists of four parcels and a portion of an additional parcel” and that “Each parcel is assessed on the Assessment Roll of the Town of Ellicott for the year 2019, which is the last preceding Assessment Roll of the Town.”

Petitioner has demonstrated that the affidavit of Mr. Okerlund satisfies the requirements of General Municipal Law §703(3).

FINDINGS

There is understandably a reluctance on the part of Respondents to permit the City of Jamestown to annex the property described in Schedule A and located in the Town of Ellicott and the Village of Falconer. However, the legislature has expressly established a detailed procedure in the Municipal Annexation Law to allow for annexation of territory in an adjoining municipality.

The Court finds that the Annexation Petition submitted by the City of Jamestown complies in form and content with the requirements of the Municipal Annexation Law.

The Court further determines that the Findings, Objections and Determinations and written Orders of the Respondents denying the Proposed Annexation were reached “without sound basis in reason and ... without regard to facts.” Matter of Pell v. Bd. Of Ed., 34 N.Y. 2d 222, 231-232 (1975) and ought to be vacated and annulled on the grounds that the determinations were arbitrary, capricious, or affected by errors of law. CPLR §7803(3).

WHEREFORE, it is,

ORDERED, that the Petition is GRANTED, pursuant to Article 78, and declaring that the Annexation Petition complies in form and content with the provisions of Article 17 of the General Municipal Law, and it is

ORDERED, that the Findings, Objections and Determinations and written Order of the Town Council of the Town of Ellicott dated March 16, 2020 in accordance with General Municipal Law §711(2)(a) denying the Proposed Annexation Resolutions is vacated and annulled insofar as they determined that the Annexation Petition did not comply in form and content with the provisions of Article 17 of the General Municipal Law , and it is

ORDERED, that the Findings, Objections and Determinations and written Order of the Board of Trustees of the Village of Falconer dated March 20, 2020 in accordance with General Municipal Law §711(2)(a) denying the Proposed Annexation Resolutions is vacated and annulled insofar as they determined that the Annexation Petition did not comply in form and content with the provisions of Article 17 of the General Municipal Law .

This shall constitute the Order of the Court.

DATED: [November 23, 2020](#)



HON. LYNN W. KEANE, J.S.C.