

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

In the Matter of the Application of
**JACK BAILEY, ANDREW DEWOLF,
STEPHEN CORCORAN, STEPHEN VANDUYNE
AND JOHN MURTARI**

Petitioners,

For Judgment Pursuant to CPLR Article 78 and
GML §786(1)

-vs-

Index No. ~~75256~~

75906

VILLAGE OF LYONS BOARD OF TRUSTEES

2013

Respondent.

APPEARANCES: Jack Bailey, Andre DeWolf, Stephen Corcoran,
Stephen VanDuyne, and John Murtari
Petitioners Pro Se

Arthur B. Williams, Esq.
Nesbitt & Williams
Attorney for the Respondent

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WAYNE COUNTY
SUPREME AND COUNTY COURT

MEMORANDUM - DECISION

John B. Nesbitt, J.

On November 6, 2012, the voters of the Village of Lyons approved a ballot proposition simply stating: "Shall the Village of Lyons be dissolved?" This ballot proposition did not arise in a legal vacuum, but derived from state enabling legislation effective in 2010 known as the "New N.Y. Government Reorganization and Citizen Empowerment Act," codified as Article 17-A of the N.Y. General Municipal Law (GML). The instant proceeding derives from the operative effect of the passage of such proposition as set out in Article 17-A. More specifically, GML §782 directs that:

1. In the case of a proposed dissolution of local government entity properly initiated by petition of electors pursuant to section 779 of this title, if a majority of the electors voting at a referendum vote in favor of dissolution, the entity's governing body shall meet within thirty days after certification of the favorable vote and, within 180 days of such meeting, prepare and approve by resolution a proposed elector initiated dissolution plan.

In this case, the municipality charged with the statutory duty of meeting within thirty days after certification of the favorable vote and preparing and approving within 180 days after that meeting a proposed elector initiated dissolution plan is the Village of Lyons acting through its Board of Trustees.

On November 27, 2012, the Wayne County Board of Elections certified the results of the vote approving the proposition to dissolve the village, and the Board of Trustees next met on December 27, 2012, where formation of a dissolution committee was discussed. The dissolution committee was constituted on February 12, 2012, by resolution of the Board of Trustees and a consultant retained for the purpose of creating a proposed dissolution plan to be submitted to the Board of Trustees for its consideration and approval, if appropriate. The contract with the consultant was signed February 22, 2012, and the first meeting of the dissolution committee was held on March 7, 2012.

The 180 day time period for approval of the dissolution plan expired on or about June 27, 2013, and the next day this proceeding was commenced pursuant to GML §786(1) and (2), which read:

1. If the governing body of a local governmental entity with a duty to prepare and approve a proposed elector initiated dissolution plan pursuant to section 782 of this title fails to prepare and approve such plan or is otherwise unable or unwilling to accomplish and complete the dissolution pursuant to the provisions of this article, then any five electors who signed the petition seeking dissolution may commence a special proceeding against the entity pursuant to article seventy-eight of the civil practice law and rules, in the supreme court within the judicial district in which the entity or the greater portion of its territory is located, to compel compliance with the provisions of this article.
2. If the petitioners in such special proceeding shall substantially prevail, then the court shall issue an injunction ordering the governing body to comply with the applicable provisions of this article. If the governing body violates the injunction, the court shall appoint a hearing officer pursuant to article 43 of the CPLR to hear and determine an elector initiated dissolution plan for the entity that complies with the provisions of section 782(2) of this title.

In its Answer and Return, respondent recites its actions to address its duties under GML Art. 17-A. First, after having been presented with the dissolution petition, the Board of Trustees resolved on September 11, 2012, to apply for an expedited local government efficiency grant to partially offset the cost of going through the statutory dissolution process. Second, the Board created a dissolution committee and engaged a consultant to assist in the process. Third, the Dissolution Committee met

14 times since its inception and its six subcommittees have met repeatedly as well. Fourth, completion of the plan has been impeded by the time involved in garnering the necessary financial information and securing answers to questions posed to state regulatory officials.

The petitioners question the good faith of the respondent. They note that one or more of the members of the Board of Trustees have openly opposed the dissolution initiative, and suggest that the respondent's emphasis upon the quality of the plan over its timeliness is mere subterfuge to delay or even derail the village's dissolution. At least early on, huge chunks of time were lost due to inaction, which, petitioners argue, suggest that the time problems are self-inflicted and not due to the process in general or local issues in particular.

The Court is sensitive to the fact that a purpose of the 180 day time period was to ensure that the officials charged with the responsibility to implement dissolution would not "back-burner" the project, simply because they may not agree with it. So too, the seriousness with which the state legislature took the time limits manifests in the provisions of law expressly providing for judicial relief and the unusual remedy of authorizing the court to divest the municipality of its statutory responsibility and reposing it in a court-appointed hearing officer. Given this, judicial leniency should not be the norm and justified only on a case-by-case basis supported by good cause.

Upon the return date of this petition, the Court informed the parties that if the Village could demonstrate at the Court's motion term on August 20, 2012, that it was prepared to create and approve a dissolution plan by October 20, 2012, it would grant the extension. The parties appeared on the August 20th date and explained their positions. For its part, the Respondent is now prepared to complete and approve its dissolution plan without waiting for additional information or further advice from outside agencies. There are no impediments to the plan being approved on or before October 20th.

Accordingly, the Court will grant the petition to the extent of enjoining the respondent to have a Board of Trustee's approved dissolution plan in place by October 20, 2013, failing which the Court will appoint a hearing officer pursuant to GML §786(2) to undertake that responsibility.

The Court will award petitioners their statutory costs in this matter.

This decision shall constitute the Order of this Court.

Dated: August 26, 2013
Lyons, New York



JOHN B. NESBITT
Acting Supreme Court Justice