

Appellate ID #

To be submitted

STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
FOURTH DEPARTMENT

Jack Bailey, Andrew DeWolf, Stephen Corcoran,
Stephen VanDuyne, John Murtari
Petitioners/Appellants

-Against-

Village of Lyons Board of Trustees,
Respondents,

Appealed from Supreme Court, Wayne County, Honorable. John Nesbitt, Supreme Court Judge.
Index 75906-2013

APPELLANT'S BRIEF

Andrew DeWolf (Pro Se)
7 Sisson Street
Lyons, NY 14489
(315)398-1195

& Jack Bailey (Pro Se)
35 High Street
Lyons, NY 14489
(315)946-4244

On behalf of Appellants/Petitioners.

TABLE OF CONTENTS BRIEF

	Page No.
Table of Authorities _____	5
Questions Presented _____	6
Nature of the Case _____	7
Summary of Argument _____	8
Statement of Facts _____	9 - 18
A. Memorandum – Decision and Order _____	9
B. Petitioners’ Motion _____	10
C. Respondent Answer and Cross Request _____	12
D. July 23 rd Hearing by Judge Nesbitt _____	14
E. Additional Filings by parties for August 20, 2013 Hearing _____	16
F. August 20, 2013 Hearing before Judge Nesbitt _____	17
 <i>ARGUMENT 1 – Disregarding a key village board meeting in the Court’s findings of fact led to error in applying judgment and discretion</i> _____	 19 - 22
 <u>POINT I: The Court failed to consider the December 3, 2012 Village Board meeting and its significance to the case.</u> _____	 19
 <u>POINT II: The December 3, 2012 Village Board meeting was part of a process discussed in the NYCOM Handbook on Dissolution that the Mayor reports the Village Board adhered to.</u> _____	 20
 <u>POINT III: The December 3, 2012 Village Board meeting set the NYCOM Handbook discussed processes in motion.</u> _____	 20
 <u>POINT IV: The failure of the Court to consider the December 3, 2012 Village Board meeting calls into question the validity of the Court’s determination regarding “Good Faith Effort, Willingness & Ability, and Reasonable excuse of delays to the process.</u> _____	 21

POINT V: By failing to place the December 3, 2012 meeting into the context of the entire case, the facts needed to decide the case on its merits were not considered, thus the decision was unjust. 21

ARGUMENT 2 – Error in CPLR 7804 procedure 22-28

POINT I: The Court failed to dispose of the case at the first hearing pursuant to the requirements of entry law GML 17-A Sections 782 & 786, CPLR Article 78 Section 7804. 22

POINT II: Pursuant to CPLR Article 78 Sections 7800-7806, the proceedings were properly initiated, no threshold objections were raised, and the case met requirements for summary judgment. 22

POINT III: Appeals case law has established that **statutory time frames are not negotiable**, and pursuant to CLPR 7804 the case should have been decided on its papers and merits after the first hearing. 23

POINT IV: The Entry law at question in an Article 78 proceeding sets forth the parameters to be considered and acted on by the Court. 23

POINT V: Article 78 Proceedings are usually decided on the papers presented. 24

POINT VI: The Court MUST give effect to the plain language of the Entry Law when making decisions pursuant to CPLR 7804 procedure. 24

POINT VII: Failure to comply with plain language of law means the Judge is exceeding judicial discretion. 25

POINT VIII: CPLR 7804 and 7806 should be applied with deference and caution to the legislative and executive departments so as not to upset the system of checks and balances. 26

POINT IX: Discretion to consider declaratory relief requested should be strongly considered when the issues presented have a strong chance of reoccurring in the future with similar results. 28

ARGUMENT 3 - *Error in CPLR 2004 application of discretion* 28 - 32

POINT I: CPLR 2004 provides broad discretion to the Courts using the Good Cause Standard, but only after specific factors are weighed. 28

POINT II: Case Law establishes 4 criteria be reviewed prior to CPLR 2004 being used to grant judicial discretion. 29

POINT III: The criteria exclusions that would allow for an application of CPLR 2004 discretion was not met, thus the Court could not find Good Cause had been shown. 30

POINT IV: Allowing CPLR 2004 discretion to extend statutory deadlines would not be in the interest of justice. 31

POINT V: The Supreme Court failed to give statutory deadlines due deference in weighing CPLR 2004 application. 32

ARGUMENT 4 – *Memorandum of decision insufficient pursuant to CPLR 7806, was instead arbitrary, capricious, and unjust.* 33 - 34

POINT I: The decision only vaguely reviews the reasoning behind the judgment, without delving into the merits, legal basis, or case precedent. 33

POINT II: The full and appropriate nature of judgment pursuant to CPLR 7806 was not rendered, justice was not served, and the decision was arbitrary and capricious based upon its face. 34

CONCLUSION 35-36

i.

TABLE OF AUTHORITIES CASES

<i>Brusco v. Braun</i>	84 N.Y.2d 674 (1994)
<i>Doorley v. Demarco</i>	2013 NY Slip Op 01937
<i>Grant v. City of NY</i>	17 A.D.3d 215 (2005)
<i>Joanne S. v. Carey</i>	61 N.Y.2d 535
<i>Klostermann v. Cuomo,</i>	61 NY2d 525, 539, 540 [1984])
<i>Korn v. Gullotta</i>	72 NY2d at 370
<i>Long ET AL v. APA</i>	559 N.Y.S.2d 941 (1990).
<i>Marone v. Nassau County</i>	2013 NY Slip Op 23123 Decided on March 24, 2013
<i>Miceli v. State Farm</i>	3 N.Y.3d 725 (2004)
<i>NY City Council. v. Bloomberg,</i>	6 NY3d 380, 388 [2006]
<i>People v. Kisina,</i>	14 NY3d 153, 158 [2010]
<i>Tewari v. Tsoutsouras</i>	75 N.Y.2d 1 (1989)

Statutes

NYS CPLR Article 4, Sections 401-411

NYS CPLR Article 20, Section 2004

NYS CPLR Article 22, Section 2214-15

NYS CPLR Article 78, Sections 7801-7806

NYS GML Article 17-A, Title 3, Sections 773-790

Questions Presented

- 1) Whether General Municipal Law Article 17-A, or any of the Civil Practice Law & Rules grant judicial discretion in this unique case to extend statutory deadlines for completing a proposed elector initiated dissolution plan under Article 78 Special Proceedings brought to compel completion of statutory duties?
- 2) Whether declaratory judgment requested should have been granted in this case, given this was the first test of GML 17-A statutory deadlines with a strong chance for future cases, the strong written and verbal public advocacy of the NYS Conference of Mayors that strict adherence to the law was unnecessary, and the unique factors of this first case that require review of “Good cause, Unwilling and unable, and Good Faith Effort” legal standards.
- 3) Whether Supreme Court erred or exceeded his discretionary authority in this case by granting respondents’ request for a statutory deadline extension after petitioners substantially prevailed and a Mandamus to Compel was determined warranted.

Nature of the case

Appellants (Pro-Se) are respectfully requesting a De-Novo review of this case. Appellants are a varied group of village resident taxpayers who signed and advanced the original petition for an Elector Initiated Dissolution as authorized under the newly enacted/modified General Municipal Law Article 17-A of 2010. Respondents are the duly elected Village of Lyons Board of Trustees charged by law with creating a Proposed Dissolution Plan within 180 days and presenting it to the electors. Appellants bring this appeal from the Supreme Court in Wayne County after substantially prevailing in a Mandamus to Compel Order with caveats provided.

Acting Supreme Court Judge granted the Compel Order, but delayed its action by also granting Respondent's cross request for extension of the statutory deadline to allow Respondents approximately 4 months additional time to finish their statutory duties they were already in default of failing to complete. Appellants assert the Court granted extensions were without good cause and were an abuse of judicial discretion.

This is the 1st test and case of any judicial proceedings under GML 17-A Elector Initiated Dissolution and is ripe for review due to many factors, including the historic nature of this dissolution, the dissolution of Seneca Falls NY and the failure of two other very large village dissolution votes recently. The trend since 2010 has been for multiple villages initiating this process but failing for one reason or another. Appellants believe that a review and ruling is critical to resolving questions in the communities and the legal arenas regarding this law and its applications and boundaries of discretion provided for.

Appellants challenge the decision and order of the lower court that extending statutory deadlines was legal, and assert that the Court exceeded its authority while intruding upon the policymaking and discretionary intent of the NYS Legislature when they codified this process into law. Appellants further challenge whether good cause for failing to obey statutory requirements was ever properly explained and shown, and that an affirmation of the Lower Court ruling would gut the very purpose of GML 17-A in an Elector Initiated process.

Summary of Argument

On August 26, 2013 the Honorable Judge John B. Nesbitt granted Petitioners Motion for Mandamus to Compel as well as granting Respondents request for a deadline extension to complete statutory duties. The court declined to act on the motion for declaratory judgments and declined to dismiss the case. In failing to dispose of the case as presented at the first hearing, and instead granting the cross “request” for an extension of time to complete duties, the court erred in four fundamental ways.

First, the court erred in its findings of fact reviewed in the Memorandum of Decision and Order dated August 26. The court failed to fully consider the nature and frequency of actions, or lack thereof, that the Village of Lyons took to complete its statutory duties. The noted errors show that the court failed to consider critical facts that would be needed in order to consider the legal doctrines of “Good faith effort, Good cause, and Unwilling and Unable,” therefore the findings were flawed.

Second, the court erred in following the procedure set out under CPLR Article 78 Section 7804 by not disposing of the case forthwith based upon the papers submitted, and entry law GML17-A specifications which gave the parameters for consideration and action. Instead, the court granted a 30 day temporary extension to the Village to show it was prepared to proceed, indicated it would rehear the case on August 20 2013, and would then grant a request for a 60 day extension of duties at that time if respondents were prepared to move forward.

Third, if CPLR 2004 is considered in this case to apply for authority of judicial discretion, then the court erred in considering and applying the “Good Cause Standard, Merit, and default” rules considered in CPLR 2004 Case law. Thus, the Court exceeding authority for judicial discretion.

Fourth and finally, the court erred in its decision pursuant to CPLR 7806 by failing to clearly establishing the rational and legal basis for the decision in granting the requested relief of the Respondents. The Court acknowledged the intent of GML 17-A Section 786 was to prevent unnecessary delays. The Court failed pursuant to CPLR 7806 to explain the legal basis underlying the decision, including the basis for the “Good Cause” determination and discretion.

Statement of Facts

A. Memorandum – Decision and Order (Pages 3A – 5A)

Two hearings were held in this case, the first hearing was held July 23, 2013 with motions and papers reviewed, oral arguments heard. (155-A-168A) The second hearing was held on August 20, 2013 where decision and order was reserved after hearing from both sides, including objections of Petitioners to consideration for extensions of time.(220A-226A)

The decision page 4A incorrectly explains the facts of the case already established in the record and exhibits before the court. On November 27, 2012 the Wayne County Board of Elections did meet and certify the vote. (Pg 20A) Contrary to the decision statements, the Board of Trustees did meet again on December 3, 2012 where they acknowledged the vote results, discussed the dissolution process, set a deadline of December 10, 2012 for Dissolution Committee Resumes to be submitted, and acknowledged being successfully rewarded an LGE grant to fund the costs of dissolution. (Pg 95A-97A)

The Village Board met again on December 27, 2012 where appointments to the Dissolution Committee were made in compliance with the statutory requirement to meet within 30 days of vote certification.(Page 98A) The Dissolution Committee was appointed on February 12, 2013. This was 71 days after the Dec 3 meeting. On February 12, a consultant was retained for the purpose of creating a proposed dissolution plan to be submitted to the Board of Trustees, if appropriate. (99A-102A) The contract with the consultant was signed February 22, 2013 (143A), and the first meeting of the Dissolution Committee commenced March 7, 2012 which was 70 days into the 180 day statutory deadline requirements (94 days post December 3 meeting), that began December 27, 2012 per the Village Board.(50A, 111A-112A)

Contrary to the statement of the decision, the precise 180 day deadline expired June 25, 2012 which was exactly 180 days from December 27, 2012 Village Meeting, but may be considered to have started with the December 3, 2013 Organizational meeting of the Village Board.(95A-98A)

In its Answer & Return (126A-154A), the Village recited its actions to address its duties under GML 17-A. After having been presented with a dissolution petition (21A-49A) on August 2, 2012; the Village Board resolved on September 11, 2012 to apply for an expedited local

efficiency LGE grant to partially offset the cost of going through the statutory dissolution process.(135A) Second, the board created a dissolution committee February 12, 2013 and signed a consultant February 22, 2013 to assist in the process. Third, the Dissolution Committee met 14 times and its six subcommittees met as well as of July 20, 2013. Fourth, the respondent asserted that completion of the plan was impeded by the time involved in garnering necessary financial information and securing answers posed to state regulatory officials on June 20, 5 days prior to the statutory deadline, 175 days into the process. (148A)

“Petitioners questioned the good faith effort of the respondent. (8A-125A)They note one or more members of the Board of Trustees have openly opposed the dissolution initiative, and suggest that respondent’s emphasis on quality of the plan over its timeliness is mere subterfuge to delay or even derail the Village’s dissolution.”

On July 23, 2012 the Court gave the Village of Lyons 30 days to demonstrate that they were prepared to complete a dissolution plan, and if by August 20th return date they could demonstrate such, the court would grant the Village 60 additional days to complete the statutory duty of completing and presenting a proposed dissolution plan. Both the written decision and the oral decisions failed to explain the legal basis for granting the extensions.

On August 20, 2013 the court reconvened and over objection of Petitioners, granted respondents request for another 60 day extension to complete statutory duties. The court ordered a plan be prepared and submitted by October 20, 2013 or a Judicial Hearing Officer will be appointed. The court awarded costs to Petitioners.

B. Petitioners’ Motion

Petitioners (Pro Se) moved on June 28, 2013 via an Order to Show Cause seeking a declaration that the Village of Lyons was in violation of GML 17-A, requesting an order to compel the Village to complete statutory duties, and requesting and awarding of costs to petitioners. (6A-125A) Petitioners properly established jurisdiction, venue, and enjoined the proper parties to the complaint as required. Petitioners requested declaratory judgment seeking to establish that Respondents were “unwilling and unable” to comply in good faith based on their

present and previous behavior. Petitioners requested a Mandamus to Compel order and sought reimbursement of costs.

Petitioners next reviewed background and facts of the case. (10A-13A). Pursuant to GML 17-A this is an Elector Initiated Dissolution Process in which the electors had succeeded in a ballot vote and now were further pursuing their rights to compel statutory duty of their public officials to complete a Proposed Dissolution Plan within 180 days.

Petitioners established that early on in the process, the Village of Lyons asked the NYS Conference of Mayors 'expert legal counsel' to explain the law at a public hearing in which the concept was introduced that strict adherence to GML 17-A was unnecessary and that *"As long as village officials work diligently and in a good faith effort to complete the proposed dissolution plan, it is unlikely a judge will interfere in the process..."* (11A, 51A)

Petitioners then established more facts of the case that included the December 3, 2012 Board meeting where statutory requirements were again formally acknowledged, a deadline for submission of resumes to the Dissolution Committee was set for 1 week later, and the Mayor anticipated making appointments to the Dissolution Committee starting December 12, 2013. (97A)

Petitioners presented the various meetings held, and established that the first meeting of the Village Board appointed Dissolution Committee was not held until March 7, 2013 and was 70 days into the 180 day statutory deadline. (12A) Petitioners established via multiple exhibits that the tone of these meetings continued to reflect the public written and verbal advocacy of NYCOM that strict adherence to GML 17-A deadlines was unnecessary as judicial discretion would allow for extensions.

Petitioners then attempted to establish that Respondents had failed to put forth a good faith effort to discharge statutory duties and were instead "unable and unwilling" to comply.(14A-18A) To establish this, petitioners reviewed the proceedings and material proving that the Village Board was fully aware of statutory duties via the NYS Conference of Mayors and was already utilizing MRB group as the consultant of choice since at least July 25, 2012 due to their previous expertise regarding dissolution.

Petitioners reviewed the quotes in the public record showing members of the Village Board and Mayor being hostile towards dissolution, and then moved on to establishing that there were financial and ethical conflicts of interest with the chosen consultants in MRB Group. (15A-16A)

Petitioners had previously established that MRB Group Consultants met with the Village board July 25, 2012 and gave an anti-dissolution perspective that was not countered, only attended by the Board and MRB. They further established that MRB Consultants were the former Mayor & Administrator of Seneca Falls officially opposed to dissolution in that capacity, and also a Vice President of NYCOM and opposed to dissolution in that capacity. They reviewed public statements and media statements by MRB Consultants that showed strong outright prejudice against dissolution. (16A)

Petitioners reviewed the exhibits that would preclude Respondent's defense of "Good Faith Effort" and "Unwilling and Unable" legal doctrines. They reviewed the plethora of unexplained delays by the Village Board between December 3, 2012 and March 7, 2013 when the appointed Dissolution Committee began its first meetings. They reviewed media interviews that showed the Mayor was directly involved in all areas of the process and its delays. (17A) Petitioners wrapped up by reviewing the words of the respondents and their contractors in email communications obtained via FOIL that further showed ex parte communications and collusion to derail or defeat dissolution by asserting that malfeasance had been performed by the pro-dissolution group. (17A-18A, 116A-119A)

Finally, Petitioners argued that the cumulative evidence supported a declaratory finding that the Respondents failed to put forth a "Good Faith Effort" towards discharging their statutory duties and instead were "Unwilling and Unable" to comply.

C. Respondent Answer and Cross Request

Respondent's Attorney Arthur Williams submitted a verified answer on behalf of respondents. (126A-154A) Respondent set forth his admissions that the board had met on the dates alleged, there was a successful ballot initiative, and the proceeding was brought under GML 779. Respondent denied each and every other allegation of the petition, and then moved forward to presenting the facts from Respondents perspective.

Respondent reframed the issue as “how much additional time shall be required to submit and approve a comprehensive and responsible plan of dissolution for the Village of Lyons?”

Respondent presented that the Lyons Village Board met September 11, 2012 and resolved to apply for an expedited Local Government Efficiency Grant to offset the cost of going through the statutory dissolution process. Mayor Corrine Kleisle signed the grant agreement providing \$49,500 assistance on November 26, 2012.

The Village of Lyons received and acknowledged receipt of formal certification of the vote on December 3, 2012 at their yearly organizational board meeting. (95-97A)

The Village of Lyons met December 27, 2012 with Deputy Mayor Dennis Alvaro presiding, and six names were submitted to serve on the Village Board Appointed Dissolution Committee.

The Village met February 12, 2013 and filled the three remaining positions on the Village Board appointed Dissolution Committee. The committee’s first meeting was March 7, 2013.

The Mayor signed a contract with MRB Group on February 22, 2013 to provide assistance in preparing a dissolution plan.

The Dissolution Committee met 14 times starting March 7, 2013 and six subcommittees met as well. As of the date of the answer, more information needed to be obtained and questions answered prior to the Village completing the Proposed Dissolution Plan. (128A)

Respondents then moved forward with establishing a legal justification for extension of time to submit the Proposed Dissolution Plan. (128A-132A) They argue that some requirements of the plan are incredibly complex and entangled with other requirements and that this requires a herculean effort to identify, sort out, and resolve.

Respondents further argue that these issues are of first impression to the Village Government and Dissolution Committee.

Respondents entered into exhibit a list of questions they asked of the NYS Comptroller’s Office on June 20, 2013, (five days prior to statutory deadline, 175 days after December 27) and that they cannot complete a comprehensive and responsible plan until these questions are answered. (130A).

Respondents moved on and attempted to establish a good faith effort by the Village by ensuring a comprehensive and responsible plan was being created, regardless of the time needed. (131A-132A) They summarize their arguments by noting that historically it has taken an average of 276 days for other municipalities to complete this process.

Respondents requested that the petition be dismissed or that a reasonable extension of time be granted to allow completion of statutory duties. They did not list any legal precedent, case law, or other laws in their cross request for action to support the basis of their requests.

D. July 23rd Hearing by Judge Nesbitt (155A-168A)

The Judge established that the Village was represented by Nesbitt & Williams and that he and counsel used to be in a legal partnership but in 12 years had no connections. He offered to recuse himself, Petitioners declined the offer. The Judge briefly reviewed the case and turned the floor over to Respondent's Attorney.

Respondents alleged that the statute was unreasonable and didn't give enough time to complete statutory duties. Respondents asserted that the village undertook the process and moved forward consistently. They reviewed that key elements were hanging the process up, namely that they were waiting for the comptroller's office to get back to the Village with answers to certain question and continued on to acknowledge that they were unable to comply with the statutory requirements.(158A). They told the court that it would take a number of more months to get the required dissolution plan completed as required.

Respondents told the court that "as your Honor knows, from a municipal arena, it just takes a long time." They asserted to the court that they were moving forward in good faith and asked the Court to compel the Village to have the plan submitted by December 31, 2013. (159A) This request would be an extension of statutory deadlines by an additional 184 days.

Respondents wrapped up by asserting that good cause had been shown to extend this matter and compel the Village to complete the plan by December 31, not immediately. (160A)

Petitioners rebutted the oral arguments of Respondents and asserted that the Answer and Oral arguments were insufficient. They pointed out that the Respondents were already in excess of one month late in completing statutory duties and that the Village had not even met with NYS Comptroller's Office until 5 days prior to the statutory deadline. They asserted that such behavior did not support an assertion of good faith effort. (161A)

Petitioners asserted that per NYCOM and Respondents on September 25, 2012; Respondents had maintained that they could not meet the statutory deadlines and that leniency would be granted regardless, making any judicial challenges a moot point.

Petitioners requested that the Court uphold the law and grant the primary motion and requests in full. They reminded the court that the Village Consultant for dissolution MRB Group had been involved in the process since July 25, 2012 and coupled with experienced consultants and expert lawyers were not able to comply with statutory requirements. (161A-162A)

The court requested clarification of the requests of Petitioners and was asked to uphold the requests already presented via papers: Declaration of violation and being unwilling and unable to comply, give a 2 week compel order, and then appointment of a JHO to finish the process.(162A).

The court questioned Respondents about what they had done besides having meetings and hiring a consultant. He asked "Has anything actually been done?" Respondents answered that the committees have met on a regular basis and part of the plan was put together but was missing cost assumptions. The court clarified further asking "Is there a preliminary, even a draft plan available?" Respondents were unable to answer the question with any clarity and summarized by reasserting that dissolution takes a long time to do and if it goes to a JHO it will be 2016 before the process is complete. (163A)

The court clarified again by noting that Respondents are claiming they are waiting for the comptroller to get back to them and that's what was holding them up. (163A-164A) He asked them essentially what the shortest time frame for completion they would need to get this done and was given an answer of October 25, 2013.

The court reported he was going to compromise and will adjourn until the next months calendar. He stated that “the Village is going to have to tell me that they have all the information they need to complete this plan. IF they have it and can get it done in 60 days after that, then I will grant the 60 days.” Otherwise, the Judge noted he would turn this over to a JHO.

Petitioners requested and were granted a final statement that they meant as an objection at that time. They pointed out that the Village initially had 99 days from the time they knew of the November vote results until they finished appointing a dissolution committee. Petitioners pointed out that the Village had hired MRB in advance because MRB Consultants had already been through dissolution in Seneca Falls and knew all about the issues and process, and knew what would be needed from NYS. Instead, Respondents waited until 5 days prior to the statutory deadline to meet with the Comptroller Office. (165-167A) Petitioners reasserted that at each and every point of the process there were intentional delays by the village because they asserted they could avoid the deadline and obtain judicial discretion to get it done, which violated the spirit of the law.

Petitioner Jack Bailey further explained the negative consequences of granting the requested extensions of time. He noted that the requested extensions would push off the final dissolution date until 2016, that debt and spending continued in contradiction to the wants of the majority of voters, and those obligations such as pensions and retirements would continue to accumulate to the chagrin of taxpayers. He noted that even 60 days would interfere with strict deadlines established by the legislature and would be to the disadvantage of village residents. (167A)

Court then adjourned until August 20, 2013.

E. Additional Filings by parties for August 20, 2013 Hearing:

Petitioners filed an additional filing August 13, 2013 “In support and rebuttal of July 23 Oral Arguments.” (169A-178A) Petitioners reasserted that the Village officials showed “great hubris” by ignoring the will of the people and the spirit and language of the law while intending to plead for judicial discretion to be allowed to extend the process beyond statutory deadlines.

Petitioners asserted that the Village had expressed Motive for intentional failure to discharge statutory requirements and reviewed the asserted Motives. (170A-171A) The referenced the formal definitions of “Unwilling and Unable” and “Good Faith Effort” and attempted to show how this case applied regarding those definitions.

Petitioners illustrated two recent major board decisions regarding compliance with state or federal laws affecting the entire community, and reviewed other instances in the public records showing established behavior of the Respondents that contradicted the current claims of Respondents that in this community “things just took time.”(172A-173A)

Petitioners noted to the court that Respondents had failed to adequately explain the reasons for the many varied delays that led to them being violation of law. They summarized by reviewing the political process to this point and what was still to come, and whether further delays would be beneficial or harmful. They reasserted their original Motion be upheld and ruled on.

Respondents filed an affidavit on or about August 15, 2013 that affirmed all of the required material need to complete a dissolution plan was gathered and the Village was ready to complete the process. (179A-219A)

Respondents attested that they now can complete their statutory duty by October 20, 2013 and per Court’s previous instructions they requested to be allowed to do so.

F. August 20, 2013 Hearing before Judge Nesbitt

The court convened and head from Respondents. They reminded the court that if the Village had all the pieces ready then the Judge agreed to give them 60 more days to complete statutory duties, and they now have all the pieces and are ready. (221A)

Respondents reviewed the various tasks and agreements they had rapidly accomplished since the last appearance before the court. They asked the court to grant the promised extensions.

Petitioners were offered a chance to speak, and petitioners reviewed the overall context of the case. They reminded the court that the Village is now in violation of GML 17-A

requirements by 56 days and that an extension of 60 more days would render the Law “impotent and ignore its intent.”(223A) Petitioners reminded the court of the unexplained 70 day delays in commencing a dissolution committee and the 175 day delays in meeting with the NYS Comptroller. (224A)

Petitioners further reminded the court of other time sensitive deadlines that will be affected by the court granting the requested delays and offered a compromise that would still allow the critical deadlines to be achieved.

The court thanked all parties and reserved decision.

Argument 1: Disregarding a key village board meeting in the Court's findings of fact led to error in applying judgment and discretion.

POINT I: The Court failed to consider the December 3, 2012 Village Board meeting and its significance to the case.

A: Reference Appellants Statements of Fact pages 9-11. The Court did not mention this meeting at all in its findings of fact within the decision. Respondents never referenced this meeting in their answer or filings, while Petitioners referenced it many times in their filings and arguments.

B: At the December 3, 2012 Village Board meeting, the Village acknowledged statutory duties, certification of the vote, and noted that applications were being accepted for an appointed dissolution committee. They reported that appointments to the mentioned committee would begin one week later on December 10. Those appointments did not occur until February 12, 2013 and the delays were never explained. (95A-97A in the RECORD)

C: This matters to the case because the Village of Lyons stated on 9/25/2012 at a public meeting that they were following a Template from the Handbook created by 'Dissolution Expert' Wade Beltrano, Chief Counsel of NYS Conference of Mayors. (10-11A, 14-15A, 51A, 70A)

D: Appellants previously and continue to argue that Respondents intentionally slowed down the process as suggested by NYCOM. (70A) This December 3, 2012 meeting illustrates that Respondents began moving on a process expeditiously, then mysteriously slowed efforts without any explanation ever given.

E: The Respondents have never explained the delays in appointing a Dissolution Committee that they began the process of appointing on December 3, 2012 and the failure to explain those delays is key to Petitioner's arguments and Respondent's defense because they argue they didn't have enough time to

complete the required plan and were waiting on critical information to complete the plan.

POINT II: The December 3, 2012 Village Board meeting was part of a process discussed in the NYCOM Handbook on Dissolution that the Mayor reports the Village Board adhered to.

A: As noted previously, NYCOM set forth a process for the Village to adhere to, and due to unexplained delays, progress towards actually producing a dissolution plan didn't commence until Respondents were already under the Court's jurisdiction after July 25, 2013.

B: NYCOM advocated that the Village should be held to the "Good Faith Standard" in how they completed their duties and noted "communities...should strive to complete the plan as quickly as possible." (70A)

C: Appellants/Petitioners asked the Court in our petition to consider that between December 3, 2012 and June 25, 2013 whether the obvious delays were reasonably explained by Respondents. The Respondents never gave any substantive reasons for any of the delays or deviations in the process established by Respondents and NYCOM.

POINT III: The December 3, 2012 Village Board meeting set the NYCOM Handbook discussed processes in motion.

A: Appellants/Petitioners argued in our petition that the process discussed by NYCOM actually began December 3, 2012 with the advertising for Resume's and creation of self imposed deadlines to create a dissolution committee. (11A, 14-15A, 97A)

POINT IV: The failure of the Court to consider the December 3, 2012 Village Board meeting calls into question the validity of the Court's determination regarding "Good Faith Effort, Willingness & Ability, and Reasonable excuse of delays to the process.

A: The Village Board not only met on December 3 and acknowledged its statutory duties, but it set self appointed deadlines to rapidly move the process forward. Then, the Village Board missed its own self appointed deadline of December 10, 2012 to begin appointments to the dissolution committee.

B: A litany of unexplained delays continued after this, culminating the Village Board failing to complete its required plan and noting it was waiting on critical information from the Comptroller to proceed.

C: Appellants/Petitioners alleged and provided exhibits supporting that Respondents failed to establish "Good Faith Effort" and were "Unwilling and Unable to Comply." By disregarding the December 3, 2012 meeting, the Court could not rule justly on whether such efforts were actually done in sustained "Good Faith." (15A-18A)

C: As of the August 20 2013 Supreme Court Hearing, there were no explanations ever given by Respondents explaining these delays in appointing a Dissolution Committee or choosing a consultant while Respondents used MRB as the de facto consultant until February, when a formal appointment was made. Without any explanations for these time sensitive delays that cumulatively led to the failure of the Village Board to meet statutory duties, the Court cannot determine reasonableness of the delays or that Good Cause was shown.

POINT V: By failing to place the December 3, 2012 into the context of the entire case, the facts needed to decide the case on its merits were not considered, thus the decision was unjust.

A: The Court disregarded Petitioner's exhibits establishing the December 3, 2012 meeting and deadlines and thus it also disregarded Petitioner's arguments

that the merits of the case did not support a sustained Good Faith Effort, and that the Village was instead “unwilling and unable” intentionally to comply.

B: The Court erred by giving strong weight to Respondent’s plea for leniency without giving equal merit to the Petitioners facts and arguments presented. Thus, all of the facts needed to decide the case on its merits were not considered, and the resulting decision is deficient and unjust.

Argument II – Error in CPLR 7804 procedure

POINT I: The Court failed to dispose of the case at the first hearing pursuant to the requirements of entry law GML 17-A Sections 782 & 786, CPLR Article 78 Section 7804.

The court erred in following the procedure set out under CPLR Article 78 Section 7804 by not disposing of the case forthwith based upon the motions, papers submitted, and entry law GML17-A specifications for considering the case at that time. Instead, the court granted a 30 day temporary extension to the Village and indicated it would re-hear the case on August 20, 2013 and grant a request for a 60 day extension of duties at that time.

POINT II: Pursuant to CPLR Article 78 Sections 7800-7806, the proceedings were properly initiated, no threshold objections were raised, and the case met requirements for summary judgment.

A: Petitioners properly initiated the proceedings using an Order to Show Cause and Motion for relief, Respondents replied in an answer that moved for a dismissal without explaining basis for the dismissal, and otherwise sought for an extension of time to complete statutory duties without explaining any legal basis for the cross motion. There were no threshold objections raised.

B: Respondents failed to establish any legal basis for the requested extension of statutory deadlines. They acknowledged being unable to complete their

required duties and failed to adequately answer the Petition properly dealing with CPLR 7803 questions, thus the requirements were met for a Summary Judgment under CPLR 7804 and GML 17-A Section 786 compelling the Village to complete its duties.

POINT III: Appeals case law has established that **statutory time frames are not negotiable, and pursuant to CLPR 7804 the case should have been decided on its papers and merits after the first hearing.**

A: Quoting Chief Judge Kaye in *Miceli v. State Farm Automobile Insurance Company*. The case was reviewing CPLR 3212 and the good cause standard there, but we assert both cases also have relevance in how CPLR 7800 – 7806 and CPLR 2004 should be applied. “As we made clear in *Brill*, and underscore here, statutory time frames — like court-ordered time frames (see *Kihl v Pfeffer*, 94 NY2d 118 [1999]) — are not options, they are requirements, to be taken seriously by the parties. Too many pages of the Reports, and hours of the courts, are taken up with deadlines that are simply ignored.”

B: Such is the crux of Appellants arguments previously before the Supreme Court, and now before this court. We continue to assert and plead with the Courts to uphold statutory deadlines and declare that Village Boards are not above the law in these cases.

POINT IV: The Entry law at question in an Article 78 proceeding sets forth the parameters to be considered and acted on by the Court.

A: The entry law in this case was General Municipal Law 17-A Section 786 which granted petitioners judicial recourse if the Village Board failed to approve a Proposed Elector Initiated Dissolution Plan within 180 days.

B: The plain language text of GML 17-A Section 786 does not give any consideration for discretion, and instead lays out what shall be done if petitioners substantially prevail.

POINT V: Article 78 Proceedings are usually decided on the papers presented.

A: *Dekom v. NYS Dept of Financial Services et al* is our basis for understanding the Article 78 proceedings in this case. “An Article 78 proceeding is a special proceeding. It may be summarily determined upon the pleadings, papers, and admissions to the extent that no triable issues of fact are raised. (CPLR 409 [b]; 7801, 7804 [h].) Thus, much like a motion for summary judgment, the court should decide the issues raised on the papers presented and grant judgment for the prevailing party, unless there is an issue of fact requiring a trial. (CPLR 7804 [h]; *Matter of York v McGuire*, 99 AD2d 1023 [1984], affd 63 NY2d 760 [1984]).”

B: *City Council of NY v. Bloomberg* further sheds light on Article 78 proceedings. “As a special proceeding, an article 78 proceeding “is as plenary as an action, culminating in a judgment, but is brought on with the ease, speed, and economy of a mere motion” (Siegel, NY Prac § 547, at 943 [4th ed]). Since it is “designed to facilitate a ‘summary disposition’ of the issues presented,” its procedures are in keeping with its summary nature (*Davidson v Capuano*, 792 F.2d 275, 280 [2d Cir 1986]). Although an article 78 respondent may move for summary judgment pursuant to CPLR 409 (b), it remains “in the very spirit and purpose of proceedings under article 78 to provide a summary remedy, so summary, indeed, as to dispense with the need or occasion for the application of summary judgment” (*Matter of Rockwell v Morris*, 12 A.D.2d 272, 275 [1st Dept 1961]).”

POINT VI: The Court MUST give effect to the plain language of the Entry Law when making decisions pursuant to CPLR 7804 procedure.

A: In *Klosterman v. Cuomo*, the court affirmed that “Where the language of a statute is clear and unambiguous, courts must give effect to its plain meaning”, quoting *People v. Kisina*. Here is the *People v. Kisina* in context “We begin by turning to the language of the statute in order to “give effect to the intention of the

Legislature" (*Consedine v. Portville Cent. School Dist.*, 12 NY3d 286, 290 [2009]). "Where the language of a statute is clear and unambiguous, courts must give effect to its plain meaning." We also reference *Marone v Nassau County*, where the Court reviewed a similar issue of mandamus to compel and interpretation of law.

B: GML 17-A Section 782 Part 1 clearly sets for the duty of the governing body and chose to use the wording SHALL, leaving no room for discretion in the duty being enjoined. Part 2 clearly sets forth the minimum requirements the proposed dissolution plan shall contain.

C: GML 17-A Section 786 Part 1 establishes judicial recourse to the electors if the governing body fails to complete the duty enjoined by Section 782 within 180 days. Part 2 establishes the procedure to be followed by the court if Petitioners substantially prevail, which they did in this case. The wording of Part 2 is clear and unambiguous stating "*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 forty-three of the civil practice law and rules to hear and determine an elector initiated dissolution plan for the entity that complies with the provisions of subdivision two of section seven hundred eighty-two of this title.*"

D: There is no provision for consideration of extensions of time to complete the required proposed dissolution plan as was done in this case. Part 3 discusses the final determination of the JHO, and Part 4 allows for petitioners to recoup costs if they substantially prevail as they did in this case.

POINT VII: Failure to comply with plain language of law means the Judge is exceeding judicial discretion.

"Thus, we conclude that, by refusing to comply with the plain language of CPL 216.00 (1), Judge DeMarco acted in excess of his authority in matters over which

he has jurisdiction (see *Matter of Green v DeMarco*, 87 A.D.3d 15, 20; *Matter of Cosgrove v Ward*, 48 A.D.3d 1150, 1151).

POINT VIII: CPLR 7804 and 7806 should be applied with deference and caution to the legislative and executive departments so as not to upset the system of checks and balances.

A: CPLR 7804 should be applied cautiously and with deference to the legislative intent in respect to this appeal. In *Korn v. Gulotta* the Court noted “The courts must be ever vigilant against upsetting our tripartite scheme of government by intruding upon the powers and responsibilities constitutionally delegated to the executive and legislative departments. “ We note that in *Korn*, the Appellate Courts considered abuse of discretion by the Supreme Court, and urged that caution and deference should be shown so as not to upset the delicate balance of powers. In this instant case, the consequences of failing to enforce clear statutory requirements and opening the door wider for discretion in these cases will only serve to nullify the legislative intent and dishearten the very electors for which the law was enacted to be used by.

B: The Court further noted in *Joanne S V Carey* that “*plaintiffs have properly petitioned the courts for a declaration of their rights, whether derived from the Federal or State Constitutions, statutes, or regulations. Moreover, to the extent that plaintiffs can establish that defendants are not satisfying nondiscretionary obligations to perform certain functions, they are entitled to orders directing defendants to discharge those duties. The activity that the courts must be careful to avoid is the fashioning of orders or judgments that go beyond any mandatory directives of existing statutes and regulations and intrude upon the policy-making and discretionary decisions that are reserved to the legislative and executive branches.* We assert that although the court retains broad discretion, its decision in this case will be harmful to the very purpose for which GML 17-A exists and the decision has negatively impacted the checks and balances codified into that law to uphold the rights of electors.

C: In ***Brusco V Braun*** the court reviewed the plain language interpretation of statutes and concluded that if the conditions established in the statute was met, then the remainder of the statute is essentially enforceable via the SHALL verbiage, leaving no room for discretion.

D: In ***Long V Adirondack Park Agency***, the court further weighed consideration of interpretation of statutes by quoting other decisions. “[I]n the interpretation of statutes, the spirit and purpose of the act and the objects to be accomplished must be considered. The legislative intent is the great and controlling principle.” (*Ferres v City of New Rochelle*, 68 NY2d 446, 451, quoting *People v Ryan*, 274 NY 149, 152). “[R]ules of construction are invoked only when the language used leaves [the statutory] purpose or intent uncertain or questionable; [t]hey cannot be resorted to for the purpose of enabling the courts to enlarge or extend the legislative design or intent” (*People ex rel. N.Y. Central and Hudson River RR. Co. v Woodbury*, 208 NY 421, 425; accord, *Eaton v New York City Conciliation and Appeals Bd.*, 56 NY2d 340). “[T]o interpret a statute where there is no need for interpretation, to conjecture about or add to * * * words having a definite meaning * * * are trespasses by a court upon the legislative domain” (Statutes, supra, § 76, at 168). This is especially so where, as here, the judicially chosen method conflicts with the explicit legislative design.”

E: *Dooley v. Demarco* was a case similar to this one where the Court considered whether Judge Demarco had exceeded his discretion, as we assert Judge Nesbitt did in this case. Reviewing the Mandamus to compel it noted that “[T]he remedy of mandamus is available to compel a governmental entity or officer to perform a ministerial duty, but does not lie to compel an act which involves an exercise of judgment or discretion” (*Matter of Brusco v Braun*, 84 N.Y.2d 674, 679; see *Matter of Maron v Silver*, 14 N.Y.3d 230, 249, rearg dismissed 16 N.Y.3d 736). A party seeking mandamus to compel “must have a clear legal right to the relief demanded and there must exist a corresponding nondiscretionary duty on the part of the [judge] to grant that relief” (*Matter of Scherbyn v Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 N.Y.2d 753, 757;

see Matter of Harper v Angiolillo, 89 N.Y.2d 761, 765). In the present case, the language is clearly codified in an IF- Then logic statement. Thus, we assert that limiting judicial discretion in these types of cases furthers the interest of justice on behalf of electors.

POINT IX: Discretion to consider declaratory relief requested should be strongly considered when the issues presented have a strong chance of reoccurring in the future with similar results.

“Finally, we agree with petitioner that she is also entitled to declaratory relief (see *Green*, 87 AD3d at 20). “Although a declaratory judgment often revolves around a particular set of facts, [t]he remedy is available in cases where a constitutional question is involved or the legality or meaning of a statute is in question and no question of fact is involved” (*Matter of Morgenthau v Erlbaum*, 59 N.Y.2d 143, 150, cert denied 464 U.S. 993 [internal quotation marks omitted]). Additionally, the “criminal court’s ruling must have an obvious effect extending far beyond the matter pending before it so that it is likely that the issue will arise again with the same result in other cases” (*id.* at 152). Judge DeMarco relied on his decision in *Watford* in similarly determining that Pugh was entitled to judicial diversion even though she was not charged with an eligible offense. Thus, “it can be assumed that the issue presented here will recur in other prosecutions and that [Judge DeMarco] will decide the issue in the same way” (*Green*, 87 AD3d at 20).”

Argument III- Error in CPLR 2004 discretionary application

POINT I: CPLR provides broad discretion to the Courts using the Good Cause Standard, but only after specific factors are weighed.

A: As PRO SE Appellants, we acknowledge broad discretion has been granted to the Courts via CPLR 2004, but certain factors should be first considered, such as delays and delaying tactics designed to primarily ignore statutory laws and obtain discretion, as we assert occurred in our case.

B: The primary guiding laws in our case we believe were GML 17-A, CPLR 4, and CPLR 78. However, we believe that a case may be made that the Judge was authorized to extend the statutory deadlines in our case via CPLR Article 20 due to its general broad ranging discretionary power clause in Section 2004. Quoting the law “Except where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed.”

POINT II: Case Law establishes 4 criteria be reviewed prior to CPLR 2004 being used to grant judicial discretion.

A: In *Grant v. City of NY*, the Court clarified criteria for discretion being granted under CPLR 2004: “Therefore, the issue to be decided is whether there was good cause shown for the requested extension of plaintiff’s time to file her note of issue pursuant to the 90-day notice. In exercising its discretion as to whether an extension should be granted, “the court may properly consider factors such as the length of the delay, whether the opposing party has been prejudiced by the delay, the reason given for the delay, [and] whether the moving party was in default before seeking the extension” (*Tewari v Tsoutsouras*, 75 N.Y.2d 1, 12 [1989]; *see* Alexander, Practice Commentaries, McKinney’s Cons Law of NY, Book 7B, CPLR 2004, at 693). Law office failure may be accepted as an excuse (*Tewari, supra*). If plaintiff had been ready to file her note of issue within the 90-day period, she would have been entitled to proceed with the litigation irrespective of the length of the prior delay (*see* CPLR 3216 [b]); the minor additional delay needed to complete discovery should not require the opposite result. There was nothing willful about the delay, plaintiff was not in default when seeking an extension of time, and she sought only to obtain the documents she had already requested in her previously served discovery demands. Moreover,

despite defendant's emphasis on the five-year hiatus in the prosecution of this action, its vague claims of the possibility of lost witnesses and faded memories fail to demonstrate that actual prejudice will ensue. Particularly in view of the strong preference in our law that actions be decided on their merits (*see Marks v Vigo*, 303 A.D.2d 306 [2003]), a sufficient showing of good cause was made to support the needed brief extension.”

B: In *Velucci v. Home Depot*, the court was again considering late filings and application of CPLR 2004 to grant extensions. The court reviewed basis for granting the extensions of time requested. 1) Respondent acted diligently and never abandoned his defense. 2) Lack of prejudice to plaintiffs. 3) Lack of willfulness leading to the delay. 4) Existence of a potentially meritorious defense.

C: The Respondent’s exhibits do show actions taken by the board to apply for grant money, acknowledge statutory duty, and appoint a consultant and Dissolution Committee. What they don’t explain is plethora of delays when they showed they were ready to move forward in the process on both December 3 and December 27, 2012. They don’t explain why it took 70 days after that to commence a Dissolution Committee, nor why it took 175 days to submit questions to the NYS Comptroller’s office. Which was the reason they gave to the court as to why they could not finish their duties. Further, at each point of questioning, and caught on tape and via the media, the Mayor and consultants fell back on the argument it was all moot because the judiciary would just grant them discretion anyway. We assert such behavior clearly shows willfulness.

POINT III: The criteria exclusions that would allow for an application of CPLR 2004 discretion was not met, thus the Court could not find Good Cause had been shown.

A: Both Respondents and the Supreme Court in this case failed to lay out the reasons for the determination of Just and Good Cause Shown.

B: In this case, Respondents were already intentionally in violation of GML 17-A, but asked for an extension of almost 180 more days, ie end of the year. In the Answer, Respondents failed to give reasonable reasons for their failures to comply with the law or good cause for an extension of time.

C: The only defense given was that they were waiting for the NYS Comptroller's office to reply to critical questions, but they failed to even meet with the Comptroller's Office until 5 days prior to the statutory deadlines, which is also unexplained.

D: There is no explaining the delays from December 3, 2012 until March 7, when the Village Board appointed Dissolution Committee commenced meetings towards completing statutory requirements. Later filings continued to fail to address the reasons for the delays, which we assert are critical to deciding willfulness, merit, and good cause standards for CPLR 2004 application. We remind the court that the Village Board had been unilaterally using MRB Group Strategic Municipal Initiatives since July 25, 2012 and then hired them as the consultant because MRB had already gone through dissolution, knew what would be required of NYS Comptroller to answer well in advance, and was fully aware of all parts of the process.

E: While having NYS Conference of Mayors' dissolution experts, MRB SMI dissolution experts, and months of advance preparation time; the Village Board has failed to clearly explain the reasons for any and all of the delays mentioned. Without knowing the reasons for, then an application of CPLR 2004 would be inappropriately determined.

POINT IV: Allowing CPLR 2004 discretion to extend statutory deadlines would not be in the interest of justice.

A: The interest of justice was not furthered in this case because the Judiciary is negating the entire purpose for which GML 17A Section 786 exists, thus rendering the law and it's recourse as moot because the results only embolden

Public Bodies to ignore the law and deter future electors from seeking proper recourse, which by itself is prejudicial against Petitioners. I

B: If statutory deadlines are not upheld, then what is their purpose in the first place? The Court is well aware that Public Bodies are already granted deference by the Judiciary, and many factors serve to limit the chances of success in an Elector Initiated Dissolution without good cause being shown to the electorate.

C: By further affording discretion in this manner, the courts are further upsetting the delicate balance of power between the people and the very governments that serve at their behest. We assert that for public officials in these cases, the bar should be set high to serve the best interests of the electors.

D: In this case, Expert Dissolution Attorney NYCOM's Wade Beltrano and the Village of Lyons preemptively tried to dissuade electors from pursuing their rights in an Article 78 Proceeding because they noted litigation would be a moot point due to judicial discretion and leniency. The Mayor, dissolution consultants, and Dissolution Committee Chair all referenced Judicial Leniency as basis for delays at many parts of this process, which we assert should always be discouraged, even if just to uphold the tripartite scheme of checks and balances if nothing else.

E: The Court decision itself notes extensive delays on behalf of respondents which were never explained and directly led the violation of statutory deadlines. The decision noted leniency should be granted rarely, and only with good cause, but failed to explain the good cause considered in this case.

POINT V: The Supreme Court failed to give statutory deadlines due deference in weighing CPLR 2004 application.

A: As noted in *Miceli v. State Farm*, "Statutory time frames, like court ordered time frames, are not options. They are requirements." In our case, the Supreme Court has treated these as options instead of requirements in its weighing of Good Cause Shown and reasonable excuses provided.

B: We assert that the prejudice involved here is strongly against the Electors and has already served to embolden our Public Body and Mayor that they can ignore the law, run to the courts, and avoid the consequences of their actions and inactions, especially given the clarity of the law in its plain language construction.

C: This allowance for discretion in the face of all that had occurred in front of the public eyes only serves to dampen the efforts of Electors towards achieving efficiency and cost reductions in their local governments as well as enforcing other municipality related laws that play into these dynamics.

D: We strongly feel that if the courts do not set a high bar for Good Cause being shown, reasonableness of excuses, diligence of effort, and further affirm that statutory deadlines matter; then the intent of both the NYS Legislature and the intent of the Electors of Lyons has been thwarted by the Court's improvidential exercise of discretion.

Argument IV – Memorandum of decision insufficient pursuant to CPLR 7806, was arbitrary, capricious, and was unjust.

POINT I: The decision only vaguely reviews the reasoning behind the judgment, without delving into the merits, legal basis, or case precedent.

A: As we noted in Argument 1, and reassert here, the Court failed to consider all of the available evidence in the case that would negate the findings of fact and thus the decisions made based upon those decisions. The Court notes that it was sensitive to the fact this law was meant to prevent public officials from “back burning” the process just because they may not agree with it. However, the court acknowledged long delays in the process that were never explained by Respondents. It did not explain how it considered that all of the unexplained delays were NOT “back burning” the process in this case.

B: The Court reviewed the seriousness with which the legislature took the time limits specified, and that the legislature expressly provided for both judicial relief and enabled the judiciary to be able to divest the municipality of its statutory responsibilities. However, the Court appears to have taken the explanations from Respondents at face value in determining the merits of the

case, without giving the same deference to Appellants or the complete facts of the case.

C: The Court cautions that “Judicial leniency should not be the norm and justified only on a case by case basis supported by Good Cause.” . It failed to review the parameters it used to determine Good Cause in this case. The Court never received a direct answer to its questions regarding why the Village hadn’t made any concrete progress as of the July 20, 2013 hearing.

D: The public record, exhibits, and arguments illustrate an unexplained 70 day delay from December 3, 2012 to February 12, 2013 for appointing a dissolution committee. The record shows an official 70 day delay from the December 27, 2012 board meeting beginning appointments to the dissolution committee until March 7, 2013 when they held their first meeting to actually commence statutory requirements. Further, the Record shows an unexplained 170 day delay from December 27, 2012 until June 20, 2013 when the Village Board met with the NYS Comptroller to submit a list of critical questions they needed answered before they could finish the proposed dissolution plan.

E: The Court reviewed the initial 30 day extension where the Village would have to show it was ready to proceed and would then consider another 60 days extension, but fails to lay out the legal rationale behind the discretionary extension especially in light of Respondents own admissions that they failed to even meet with the Comptroller until 5 days prior to the deadline and that was one of the reasons that they could not move forward.

F: The 5th paragraph gives the partial judgment pursuant to CPLR 7806 in that it grants the Mandamus of Compel and awards costs, but it also fails to address the request for declaratory action and fails to explain the merits weighed in determining good cause shown or bad faith effort as requested.

POINT II: The full and appropriate nature of judgment pursuant to CPLR 7806 was not rendered, justice was not served, and the decision was arbitrary and capricious based upon its face.

A: By failing to explain the legal basis for the decision, disregarding evidence and testimony that would negate the assertions of Respondents, and finding partially for Respondents in this case contrary to GML 17-A, we assert that this decision was Arbitrary and Capricious and unsupported by the law and case precedent.

B: Appellants question how the Court can determine that Petitioners have substantially prevailed, triggering the enforcement mechanisms of GML 17-A Section 786 and awarding costs, while also determining that leniency is warranted and allowing incredulous statutory deadline extensions that cumulatively approached about 120 out of the 180 days given to them without any explanation as to legal basis supporting the decision.

CONCLUSION

In this case, Petitioners continued Pro Se for many reasons, including lack of financial resources for legal representation and the lack of attorney interest in Pro Bono representation.

We noted the clear language of GML 17-A, observed the board meetings presented, witnessed the statements and disinterest at best of our elected officials, and then observed the Respondents ignore the law even after intense media and public involvement. We came to the Court as a position of last resort to enforce a duly enacted law of the NYS Legislature and signed by the Governor. Instead of enforcing the spirit and letter of the law, the Court granted leniency. Thus, we appeal with a goal of reinforcing the spirit and letter of GML 17-A and restoring some of the balance of power back to the people instead of the government that serves at the behest of the people.

By disregarding Statutory and Executive Laws and instead exceeding Judicial Discretion to grant an unjust time extension to the Village of Lyons Board, we feel that the checks and balances of our tripartite scheme of government has been disrupted in a manner that will long have significant repercussions. The Court has a chance to send a strong message here like it did in *Micelli v. State Farm*.

We presented an extensive set of exhibits, reviewed the public statements of our Village Officials, and illustrated the conflicts of interest on behalf of the consultants and Village officials which tainted the process.

We asked the Courts to grant us some leniency due to our Pro Se status when considering the Syntax of our arguments and pleadings. We pleaded with the Court to grant equal deference to the Electors and exhibits equal to what was being afforded to Respondents as public officials and who were afforded counsel paid for by Electors tax dollars.

We believe that an unearned and non justified deference was afforded to Respondents in this case, contrary to the merits and facts of the case as well as clear Statutory Law and strongly worded case law. We plead with the Appellate Courts to right the wrongs presented here.

For the foregoing reasons, it is respectfully requested that the Order of the Supreme Court be modified as requested, declaratory judgment be granted, and further costs of appeal be awarded. If such is not granted, we respectfully request leave to further appeal.

Respectfully Submitted on behalf of all Petitioners/Appellant

Andrew DeWolf (Pro Se)
7 Sisson Street
Lyons, NY 14489
(315)398-1195

Jack Bailey (Pro Se)
35 High Street
Lyons, NY 14489
(315)946-4244