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Arthur B. Williams

November 12, 2013

Andrew DeWolf  
7 Sisson Street  
Lyons, New York 14489

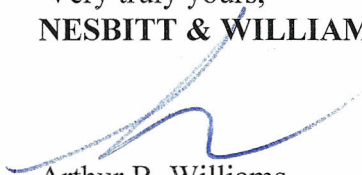
RE: In The Matter of Andrew DeWolf, et al v. Village  
Of Lyons Board of Trustees,  
Notice of Motion

Dear Mr. DeWolf:

Enclosed please find a copy of Respondent's Notice of Motion To Dismiss Appeal with regard to the above-captioned matter. I have also enclosed a copy of my Supporting Affidavit and Legal Memorandum in support of my motion.

For your information, motions are submitted on paper without personal appearances of counsel or the parties.

Very truly yours,  
**NESBITT & WILLIAMS**



Arthur B. Williams

ABW/tim  
Xc: Village of Lyons

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

COPY

IN THE MATTER OF JACK BAILEY, ET AL, PETITIONERS  
ANDREW DEWOLF,

PETITIONER-APPELLANT,

NOTICE OF MOTION

VS.

Appellate Division Docket No.:  
CA 13-01917

Index No.:  
75906-2013

VILLAGE OF LYONS BOARD OF TRUSTEES,  
RESPONDENT-RESPONDENT

**PLEASE TAKE NOTICE**, that upon the annexed affidavit of Arthur B. Williams, Esq. dated November 12, 2013 and the papers and exhibits annexed thereto, and all of the pleadings and proceedings heretofore had herein, Respondent-Respondent, Village of Lyons Board of Trustees shall move this Court on December 2, 2013 at the Supreme Court, Appellate Division, Fourth Department, M. Dolores Denman Courthouse, 50 East Avenue, Rochester, New York at 10:00 o'clock on the forenoon of that date for an Order dismissing the Appeal on the grounds that the appeal has been rendered moot and in the alternative, for an Order extending the Respondent-Respondent's time to file Respondent's brief.

No request for the relief sought herein has been previously made.

**PLEASE TAKE FURTHER NOTICE**, that pursuant to 22 NYCRR 1000.13 A 4 answering affidavits are to be filed no later than the Friday preceding the return date of this motion.

*h*

Arthur B. Williams, Esq.  
Attorney for the Village of Lyons  
Nesbitt & Williams  
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Newark, New York 14513  
(315) 331-1334  
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To:  
Andrew DeWolf  
7 Sisson Street  
Lyons, New York 14489

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

IN THE MATTER OF JACK BAILEY, ET AL, PETITIONER,  
ANDREW DEWOLF, PETITIONER-APPELLANT,

against

SUPPORTING  
AFFIDAVIT

Docket No. CA 13-01917

VILLAGE OF LYONS BOARD OF TRUSTEES,  
RESPONDENT-RESPONDENT

Respondent.

Arthur B. Williams being duly sworn deposes and says that:

1. I am the attorney for the Village of Lyons and I am fully familiar with the facts and circumstances of the above-referenced matter.
2. Petitioner-Appellants initially filed an Article 78 proceeding in Wayne County Supreme Court to compel the Village of Lyons Board of Trustees to accept an elector initiated dissolution plan.
3. The Court heard oral arguments on July 23, 2013 and August 20, 2013. Reference is hereby made to the Record on Appeal pages 155A-168A and 220A-226A
4. After reviewing the pleadings and hearing oral arguments for and against the Petitioner-Appellant's request for relief, the Court below rendered a decision compelling the Respondent-Respondents to submit and accept a Plan of Dissolution by October 20, 2013. A copy of the Court's decision is attached hereto as **Exhibit "A"**.
5. Thereafter, on September 9, 2013 the Petitioner-Appellants filed a Notice of Appeal, a copy of which is attached hereto as **Exhibit "B"**.
6. Subsequent to the filing of the Notice of Appeal, the record was settled and Respondent-Respondent was provided a copy of the Petitioner-Appellant's brief.

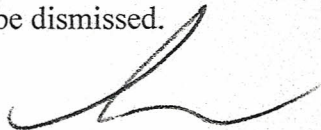
7. The Appellate Division, Fourth Department then issued a Scheduling Order calendaring this matter for its April, 2014 term.

8. The Respondent-Respondent complied with the Order of the lower Court and accepted the Plan of Dissolution at its Board meeting of September 30, 2013. A copy of minutes of the Village Board meeting wherein the Plan of Dissolution was accepted is attached hereto as Exhibit "C".

9. It is submitted that the Petitioner-Appellant's received the results their sought after results in that an accepted Plan of Dissolution is now in place in the Village of Lyons.

10. It is submitted that the Petitioner-Appellant's rights cannot be affected by the determination of this appeal and that no sufficiently practicable purpose would be served by hearing the appeal.

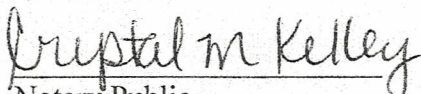
11. The appeal is moot and should be dismissed.



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Arthur B. Williams, Esq.  
Attorney for the Village of Lyons  
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(315) 331-1334  
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Sworn to this 12 day of  
November, 2013

  
Notary Public

Crystal M. Kelley  
Notary Public, State of New York  
01KE6071973  
Qualified in Wayne County  
My Commission Expires 3-25 14

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

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IN THE MATTER OF JACK BAILEY, ET AL,  
ANDREW DEWOLF,  
PETITIONER-APPELLANT,

VS.

Appellate Division Docket No.:  
CA 13-01917

VILLAGE OF LYONS BOARD OF TRUSTEES,  
RESPONDENT-RESPONDENT

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**RESPONDENT-RESPONDENT'S MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO DISMISS APPEAL**

**STATEMENT OF FACTS**

The Village of Lyons is in the process of dissolution pursuant to Article 17-A of the General Municipal Law. The vote on the election-initiated Petition took place on November 6, 2012. The Wayne County Board of Elections certified the results of the vote on November 27, 2012. The Village Board of Trustees was thereafter notified of that certification on December 27, 2012. Pursuant to General Municipal Law §782, within one hundred eighty days of such certification, the Village of Lyons was to prepare and approve a proposed elector initiated dissolution plan. Despite the Village's herculean efforts at completing the proposed elector initiated dissolution plan in a timely fashion, the Village could not complete a responsible and comprehensive Plan of Dissolution by the statutory deadline due to a lack of certain fundamental information from the NYS Comptroller which was necessary in order for the Village to make a fiscal estimate of the cost of dissolution as well as the Village had not yet settled with the two unions representing Village employees which information was required to calculate the cost of benefits for transfer or elimination of those employees. The deadline for said plan to have been prepared and accepted was June 27, 2013. On June 28, 2013 Petitioner-Appellants commenced an Article 78 proceeding pursuant to GML §786.

After having reviewed all of the pleadings submitted by the Petitioner-Appellants and Respondent-Respondent; and subsequent to hearing oral arguments on both July 23, 2013 and August 20, 2013, the Honorable John B. Nesbitt, Acting Supreme Court Justice for Wayne County Supreme Court, in his decision dated August 26, 2013 ordered Respondent-Respondent's to complete a proposed elector initiated dissolution plan by October 20, 2013.

The Village of Lyons Village Board of Trustees thereafter approved the proposed elector initiated dissolution plan at its meeting of September 30, 2013.

### POINT ONE

#### **THE APPEAL OF THE DECISION OF THE HONORABLE JOHN B. NESBITT, ACTING SUPREME COURT JUSTICE FOR WAYNE COUNTY SUPREME COURT, DATED AUGUST 26, 2013 EXTENDING RESPONDENT-RESPONDENT'S TIME TO APPROVE AN ELECTOR INITIATED DISSOLUTION PLAN TO OCTOBER 20, 2013 IS MOOT**

Petitioner-Appellant's arguments on appeal boil down to whether the lower court correctly applied Article 17-A of the NYS General Municipal Law. The Petitioner-Appellants do not challenge the constitutionality of that statute.

NYS General Municipal Law §786 states "*If the governing body of a local government entity with a duty to prepare and approve a proposed elector initiated dissolution plan pursuant to section seven hundred eighty-two 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.*"

In this instance, the Court below compelled the Respondent-Respondent to prepare and accept an elector initiated dissolution plan. The relief Petitioner-Appellant seeks has been obtained. "In general an appeal will be considered moot unless the rights of the parties will be directly affected by the determination of the appeal and the interest of the parties is an immediate consequence of the judgment." See matter of *Hearst Corp. V. Clyne* 50 NY 2d 707; 409 N.E.2d

8765; 431 N.Y.S. 2d 400 (1980). In this case, the rights of the Appellants cannot be affected by the determination of this appeal. In short, Petitioner-Appellants got the relief they requested.

## POINT TWO

### THERE IS NO EXCEPTION TO THE MOOTNESS DOCTRINE IN THIS CASE

Under the three-prong exception to the mootness doctrine set forth in matter of *Hearst Corp* (50 NY2d at 714-715), a case that is moot may nonetheless be considered on the merits where it is demonstrated that there is (1) a likelihood of repetition; either between the parties or among other members of the public; (2) a phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on, i.e. substantial and novel issues. See *Gannett Co. Inc. V. Craig J. Doran* 74 A.D. 3d 1788; 903 N.Y.S. 2d 634 (Fourth Dept. 2010).

There is no likelihood of repetition between the parties as the elector initiated dissolution plan has since been reviewed and approved. While Petitioner-Appellants may argue that a similar scenario could arise in another Village faced with an elector initiated dissolution petition, it is mere speculation that an identical set of circumstances will arise elsewhere. The facts of this case are unique to the case at hand and the Decision of the Honorable John B. Nesbitt is limited to those unique facts.

Article 17-A of the New York State General Municipal Law is straight-forward. The mechanism by which an aggrieved party can seek redress is set out in GML §786 which states in pertinent part "*If the governing body of a local government entity with a duty to prepare and approve a proposed elector initiated dissolution plan pursuant to 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 78 of the Civil Practice Law and Rules . . .*"

The concern over other aggrieved residents in another municipality faced with dissolution not being able to seek redress is without merit given the protections built into GML §786.

Petitioner-Appellants basically contend that the Honorable John B. Nesbitt erred in his application of the law and that his decision was arbitrary and capricious. The Judge's decision




on its face appears to be consistent with the statute and cannot be said to present a substantial  
novel issue that is likely to occur and evoke review.

### CONCLUSION

The Appeal is moot and should be dismissed.

Dated: November 12, 2013



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