

# Kiryas Joel's Proposed Annexation of Unincorporated Land in the Town of Monroe: An Independent Assessment of the Circumstances

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## Background

On May 6, 2015, the Orange County Planning Department issued a Request for Qualifications seeking assistance with a “thorough and timely analysis” of the impacts of the annexation of unincorporated land from the Town of Monroe into the Village of Kiryas Joel. A joint response from the Center for Governmental Research and the Chazen Companies was submitted and accepted. George Rodenhausen, Esq., of Rodenhausen Chale LLP, joined the team to provide legal counsel.

## Study Tasks

As articulated in the RFQ, assigned tasks included

Task 1 – Population, Land Use / Development, & Demographic Analysis of Annexation Proposals and Reasonable

Task 2 – Analysis of Impacts to County Services and Programs

Task 3 – Analysis of Impacts to County Assets and Facilities

Task 4 – Assistance and Review – prior to submission of County Comments on Annexation Documents Referred by Village of Kiryas Joel and other involved and interested parties.

## Kiryas Joel/Town of Monroe Annexation Study Advisory Committee

Orange County’s County Executive and Legislature appointed an Advisory Committee to oversee the study and receive its findings. Members of the Committee included:

David Church, AICP, Commissioner of Planning – Chair,  
Wayne Booth, Deputy County Executive,  
Harry Porr, Director of Operations and Cost Control,  
Katie Bonelli, County Legislator,  
Michael Amo, County Legislator,  
Myrna Kemnitz, County Legislator,  
Darcie Miller, LCSW-R, Commissioner of Social Services,  
Christopher Viebrock, PE, Commissioner of Public Works,  
Walter Koury, Commissioner of Emergency Services,  
John McCarey, Director of Real Property Services,  
Christopher Ericson, MPA, Deputy Commissioner of Health &  
Elaine McClung, member, Orange County Planning Board.

## Why is This Annexation Different?

The Village leadership and its supporters have asked why this annexation proposal warrants a costly study and rigorous regulatory scrutiny.

- First, the impact of the Village and its expansion is greater than that of other communities its size, partly because of “boomtown” nature of the pace of its growth, partly due to the unique economic characteristics of the members of the Hasidic community (and their impact on public services) and partly due to a persistent lack of engagement and consultation on the part of the Village leadership.
- Second, the Hasidic community is separate by choice and remains distinct from neighboring communities on a broad range of characteristics. The differences between the cultures are profound. These differences contribute to a level of suspicion and distrust on both sides that is corrosive and counter-productive. A clear and independent exploration of the facts will help establish a foundation of understanding and reduce the level of conflict.

## Kiryas Joel’s Environmental & Fiscal Impact

### Regulatory Engagement

The Orange County Planning Department is charged with the responsibility of overseeing and coordination actions by municipalities with environmental consequences. A lack of transparency in actions taken by the Village government make it difficult for the County to meet some of its obligations in an efficient and effective manner. For example, New York State’s Open Meetings Law requires that notice of meetings be given to the news media and conspicuously posted in one or more designated locations.<sup>1</sup> We consistently heard from county officials that no such notice is given or posted and, thus, the County cannot determine when actions, with respect to rezoning for example, are occurring. This, in turn, makes it difficult for the county to issue water permits,

<sup>1</sup> NYS Public Officers Law §104(1).

monitor sewer hookups and/or conduct analyses required under General Municipal Law (GML) §§239-m and 239-n, which is discussed in more detail below.

## Limited Resources Strained

Like any urban community, residents of Kiryas Joel require a supporting infrastructure, particularly fresh water and wastewater treatment. The high density development coupled with the very fast pace of growth within the Village burdens the natural environment. The capacities of the sewer and water infrastructure, in particular, have been pushed to their limits, with the Village absorbing all the excess, thus threatening to constrain growth elsewhere.

- ∞ As of 2014, the Village contributed about 17% of total wastewater flows to the Harriman Wastewater Treatment Facility (WWTF).
- ∞ The Kiryas Joel WWTF is expected to reach its capacity in 2020. This plant cannot be easily expanded.
- ∞ The Harriman WWTF will reach currently permitted (6.0 mgd) capacity in 2027 at which time the Kiryas Joel contribution to the flow will be about 35%. Once the proposed improvements are made at Harriman, the capacity is planned to increase to 9.0 mgd.
- ∞ The financial structure supporting both operating and capital construction is hardly transparent and may be inequitable; some further analysis (and possibly a change in how costs are shared) is warranted.

Fresh water supplies to the Village of Kiryas Joel are also constrained.

- ∞ Peak usage in August 2014 exceeded the permitted capacity of the Village wells, with the difference partially made up from five water storage tanks.
- ∞ Additional wellfields owned by the Village—but not yet permitted—provide capacity sufficient to supply anticipated demand through 2023; the pipeline to the Catskill Aqueduct is very important beyond this point in time.
- ∞ Although the technical and regulatory issues regarding the Village's pipeline to the Aqueduct are complex and far from settled, the connection is likely to be granted a permit and construction completed.

## Fiscal Impact

The fiscal impact of the Village on other taxpayers is also apparent and a source of conflict between the two cultures.

Two characteristics of the Hasidic faith work together to limit the income of community residents. First, it assigns a far higher priority to religious over secular study, limiting the earning capacity of its adherents. Second, the community believes that it has a mandate to expand. As a consequence, large families divide low incomes.

The socioeconomic contrast with surrounding communities is stark. The median age in the Village of Kiryas Joel is 12; in Orange County as a whole it is 37. The Census Bureau estimates that 60% of all Village residents have income below the federal poverty line. In the rest of Orange County, just 9% are in poverty. The list of cultural differences is long.

While some members of the Hasidic community are wealthy, most are not and many qualify for social welfare benefits that are funded by county, state and federal taxpayers.

When considering its fiscal impact on the county, note that the Village of Kiryas Joel's population is 6% of that of Orange County. Were service utilization equal to 6%, it would imply that the community is consuming exactly its population share. In practice, this would rarely happen as every community is distinct and brings its own set of needs and contributions. Nonetheless, that 6% threshold serves as a starting point for the discussion of relative burden.

Consider:

- ∞ Village residents' share of Medicaid, SNAP (food stamps), Family Health Plus, and the Heating Assistance Program (HEAP) is well above the Village's 6% share of the population.
- ∞ By contrast, Kiryas Joel's use of Medicaid for the disabled (the largest share of Medicaid spending in Orange County) is half its population share.
- ∞ Use of cash assistance programs among the Hasidic community is near zero.
- ∞ Although Kiryas Joel's residents are 21% of the county's Medicaid recipients, the age profile of its residents suggests a spending share that is much lower—we estimate about 13%. While still double the population share, this is much lower than Kiryas Joel's share of Medicaid beneficiaries would suggest.
- ∞ Village residents are disproportionate users of U.S. Department of Housing and Urban Development (HUD) housing vouchers: 32% of Section 8 vouchers countywide and 38% of Section 8 dollars flowing to Orange County benefit Kiryas Joel residents.
- ∞ Kiryas Joel's share of the cost of the Early Intervention program (for developmentally delayed children ages birth to 3) share of county cost is 17%.
- ∞ By contrast, the share of Pre-K Special Education (ages 3-5) dollars share is 7%, nearly equal to the Village population share. This is consistent with the community's relatively low utilization of special education services among school aged children and with Medicaid Supplemental Security Income enrollment.
- ∞ The Kiryas Joel Union Free School District (KJUFSD) is a major recipient of federal Title funds—far higher than in the Monroe Woodbury Central School District (MWCS). Kiryas Joel's district receives nearly \$7 million v. \$1.3 million to MWCS for a student population roughly the same size (measured by school-aged children living within the district).
- ∞ Yet if all children living in the Kiryas Joel district attended KJUFSD instead of private yeshivas, KJUFSD would receive upwards of \$100 million in state aid, possibly over \$100 million.

- ∞ Kiryas Joel's direct use of many other costly county services—the Valley View Nursing Home, Orange County Community College and others—is low or zero.

## Balance of Interests

State and federal statutes and legal precedents balance the inherent conflict between the rights of property owners to develop their land and the rights of proximate property owners to be protected from disproportionate impacts. This conflict is as old as the institution of private property: The freedom of owners to use property as they choose is not unlimited. Conversely, neighboring property owners are not protected from any change whatsoever to the *status quo*.

The rights of Orthodox Jewish landowners to develop their land in housing are no more nor less than the rights other landowners. The rest of the county has the right to ensure that this process of development is sustainable and is consistent with community standards, as reflected in environmental and land use law and precedent.

## Findings

Disagreements about the facts contribute to the atmosphere of distrust. We have attempted to resolve these disagreements to the best of our abilities, given the information at our disposal. CGR and the Chazen Companies conducted many interviews covering a wide range of opinions and reviewed many documents (listed in the Appendix) to draw these conclusions:

- ∞ The likely trajectory of Hasidic population growth is a matter of disagreement. Population growth forecasts for 2025 and beyond differ considerably. Our report reviews these forecasts in great detail and concludes that the estimated compound growth rate employed by Tim Miller Associates in the DGEIS is consistent with previous Village expansion (although slightly higher than the CGR forecast). We have employed the rate implied in the DGEIS to project the Orange County Hasidic population through 2040, for a total of about 96,000. This estimate is based principally on the natural growth of the existing population, which is the expressed obligation of the community's leadership.
- ∞ The DGEIS forecast assumes modest in-migration. Annexation opponents correctly observe that in-migration from other Satmar population centers, particularly Williamsburg, Brooklyn, could be significant, limited only by housing capacity. It is this potential for explosive growth that feeds much of the concern within neighboring communities. The organic growth of the established residents is already difficult to accommodate—a higher rate of growth would likely be environmentally unsustainable given limited access to fresh water and wastewater treatment capacity.
- ∞ Were the Orthodox Jewish community to build residential housing on all land currently owned by the Village or affiliated owners outside the Village (but without annexation), the carrying capacity of these properties would be about 1,800 units under current zoning, accommodating something less than 6,000 additional residents. This falls short of the demand being generated

by the existing population of Kiryas Joel between now and the end of the decade, depending on how much construction continues to occur within the Village proper.

- ∞ The annexation would allow Kiryas Joel the ability to “upzone” lands acquired, facilitating residential construction more easily than on properties owned outside the Town of Monroe.
- ∞ The Hasidic community affirms that it has a religious obligation to provide housing for its organic growth. Yet it has a corresponding obligation to its neighbors to accommodate this growth in a manner that is consistent with the preservation of environmental quality and effectively mitigate the negative spillover consequences.
- ∞ Opponents of the annexation have asserted that increasing development density is not the intended purpose of New York’s annexation law. We disagree and find nothing in NYS General Municipal Law Article 17 (Municipal Annexation Law) or precedent to support this position. The only standard is that the annexation be in the “overall public interest.”

Commenting on annexation, the National League of Cities notes that

*“the urbanized core city may seek to annex . . . the adjacent urbanizing fringe area in order to use resources efficiently, capture growth, gain a tax base or implement a plan across current borders. In some cases, annexation may precede urbanization as a means of capturing anticipated growth.”<sup>2</sup>*

Annexation provides for orderly urban expansion, facilitating the extension of urban services like water and sewer to the urban fringe, and preventing costly suburban sprawl. Whether clearly acknowledged or not, the Hasidic community seeks to annex unincorporated lands in the Town of Monroe for the purpose of building high density residential development, consistent with densities already found within the Village. This would require rezoning, although the zoning within the land identified as “The Fingers” is already near the density permitted in the Village.

- ∞ The key environmental constraints to continued residential growth are water quality and supply and sewage treatment capacity.
  - ∞ The current system for allocating costs for wastewater treatment is anything but transparent. Without hard measurement of flows it is difficult to determine who is paying what share of costs, and whether wastewater treatment costs are being fairly shared or not.
  - ∞ Kiryas Joel has been criticized for not complying with the Clean Water Act, most prominently by the privately-owned chicken processing plant and meat market located in the village. The violations, which include discharging untreated wastewater into storm drains, are acknowledged in a consent decree entered into in 2014 as a result of a suit brought by the U.S. Attorney for the Southern District of New York and the Environmental Protection Agency. This is a private enterprise; the Village leadership and the technical staff at Orange County Sewer District #1 should work together to ensure compliance with the consent decree.
  - ∞ Despite the fact that the Kiryas Joel sewage treatment plant is leased to and operated by Orange County, the plant has frequently discharged wastewater containing high levels of

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<sup>2</sup> <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-powers/municipal-annexation>

pollutants, particularly salt, causing violations of its discharge permit. Moreover, sewer connections have been awarded without attention being paid to the sustainable growth of treatment capacity. Orange County does not appear to be using existing powers to scale the growth of Kiryas Joel to existing sewer capacity.

- ∞ Kiryas Joel's impending water supply constraint is being addressed directly through its ongoing construction of a 24" pipeline connecting Kiryas Joel to the NYC aqueduct system. The construction of the pipeline has been pursued within the laws and regulations of NYS. Its completion would protect adjacent communities from the consequences of groundwater over-pumping once the pipeline is completed and is in use.
- ∞ Kiryas Joel does not comply with NYS land use laws, particularly a municipality's obligation to refer changes in zoning ordinance, issuance of special use permits, site plan and subdivision approvals, and use or area variances to the Orange County Planning Department as required under NYS General Municipal Law (GML) §239-1, m & n. The purpose of this provision is to, "bring pertinent inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities...." and by so doing to facilitate regional review of land use proposals that may be of regional concern." The bypassing of these referral requirements and recommendations lends credence to the claim that Kiryas Joel is operating outside the law.
- ∞ The current structure of the Kiryas Joel fire department relies heavily on mutual aid from other fire companies in the county to actually extinguish fires. Expansion of the Village population will exacerbate this problem.
- ∞ The Kiryas Joel Union Free School District and the Village of Kiryas Joel are coterminous. While we appreciate the many philosophical and legal questions this raises, the experience of the East Ramapo Central School District is instructive. The coterminous boundary is a practical solution to a very challenging conflict between the unique instruction provided to Hasidic children and the provision of public education services outside the Village.
- ∞ Both the Orange County government and the Village of Kiryas Joel have spent substantial taxpayer dollars on outside counsel; \$1.9M for the County (0.05% of budget) and over \$2M for Kiryas Joel (2.5% of budget) over the past five years. These expenditures are consistent with the important and complicated legal context within which the municipalities operate, and the current relationship between Kiryas Joel and its neighbors. However, litigation is a reactive, high-risk/low-reward way for municipalities to practice governance on a regular basis. While all parties here have legitimate interests—supported by substantial bodies of law—there are no guaranteed outcomes through litigation.

To outside eyes, the *status quo* is unnecessary and counter-productive. The growth of the Hasidic community in Orange County will continue. Members and supporters of the community plus landowners willing to develop or sell land have undeniable rights in their property that includes ability to develop that property for housing—within established legal limits.

The leadership of the Hasidic community is entitled to pursue its internal obligation to provide housing for its new families. But that right is not unlimited just because this is a religious

community. While it can choose to be set apart culturally, Kiryas Joel and the larger Orthodox Jewish community still must comply with laws passed by Orange County and the State of New York that are intended to ensure that growth is sustainable and balances the interests of all of the region's residents. These conflicts can and should be settled through negotiated agreements, not through the courts.