

TOWN OF MONROE: COUNTY OF ORANGE  
TOWN BOARD

FILED  
ORANGE COUNTY CLERK  
2015 SEP -8 P 8:50

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*In the Matter of the Petition for annexation of  
507.4 acres of land and 163.8 acres of land  
from the unincorporated portion of the Town of  
Monroe into the Village of Kiryas Joel.*

**DECISION  
RESOLUTION  
ORDER**

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**507.4-ACRE AND 163.8-ACRE ANNEXATION**

ORIGINAL RECORDED

**Introduction**

Petitioners seek to annex 163.8 acres of land<sup>1</sup> from the unincorporated portion of the Town of Monroe into the Village of Kiryas Joel (see petition annexed as Exhibit 2). The petition is filed by owners of a majority in assessed valuation; it is not an over 20% of qualified voters petition.

**Background & Procedural History**

The 163.8-acre petition was received in the office of the town clerk on August 20, 2014, eight months after the town received the 507.4-acre petition<sup>2</sup> (see petition annexed as Exhibit 1). The 163.8-acre petition seeks annexation of land in the Town of Monroe abutting or adjacent to the current municipal boundary with the Village of Kiryas Joel. The 163.8-acre petition territory consists in large part of parcels bounded on three sides by the village and on the fourth side by the Town and Village of Woodbury.

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<sup>1</sup> The 163.8-acre annexation petition is dated August 15, 2014. An earlier annexation petition was filed by some of the same petitioners in December of 2013 seeking to annex 507.4 acres of land from the unincorporated portion of the Town of Monroe into the Village of Kiryas Joel. The 164-acre petition involved here is a subset of the larger annexation request.

<sup>2</sup> Decision on the 507.4-acre petition is included within this decision.

Following receipt of the petitions, each municipality mailed a notice to property owners within the territory, to affected school districts and fire districts. Proof of the town's mailings is annexed as Exhibit 4. Each municipality was also required to publish a legal public hearing notice. Proof of publication of the public hearing notice is annexed as Exhibit 3. The public hearing was held on June 10, 2015 (see hearing transcript—Exhibit 5).

### SEQRA

#### *Type of Action:*

This matter constitutes a Type I action under the State Environmental Quality Review Act.

#### *Lead Agency:*

The Village of Kiryas Joel is the lead agency regarding this action.

#### *Environmental Impact Statement*

The lead agency issued a positive declaration, prepared a draft generic environmental impact statement, held a public hearing and issued a final generic environmental impact statement. Lead agency SEQRA findings were issued following the mandatory 10-day waiting period fixed by Section 617.11(a) of the SEQRA Regulations.

The Town of Monroe Town Board has, simultaneously with issuance of this decision, resolution and order, issued involved agency SEQRA findings.

### GML 239 Referral

This application need not be referred to the Orange County Planning Department for review.

## **Sufficiency of Petitions**

The ultimate standard in determining whether the town should consent to this annexation is whether annexation is in the over-all public interest. This standard is discussed below. In addition, before consenting to an annexation, both boards must make determinations regarding whether the petition satisfies the technical requirements of General Municipal Law Section 703.

Following receipt of the petitions, each municipality mailed a notice to property owners within the territory, to affected school districts and fire districts. Proof of the town's mailings is annexed as Exhibit 4. Each municipality was also required to publish a legal public hearing notice. Proof of publication of the public hearing notice is annexed as Exhibit 3. The public hearing was held on June 10, 2015 (see hearing transcript—Exhibit 5).

### **507.4-Acre Petition**

The 507.4-acre petition seeks to annex approximately 507 acres, comprised of 177 tax lots, from the unincorporated portion of the town into the village. The 507.4-acre petition comprises a six-paragraph petition that accurately describes the territory proposed to be annexed, states the approximate number of inhabitants and includes 19 signature pages signed by the owners of a majority in assessed valuation of the real property in the territory. Each signature page is authenticated by a witness. The 507.4-acre petition also includes a metes and bounds description of the annexation territory as exhibit A, an annexation map depicting the 177 parcels and listing the Section-Block-Lot ("SBL") numbers as exhibit B, and a certification of the town assessor as exhibit C to the Petition.

The total assessed valuation of the annexation territory for the year 2013 is \$9,175,150.00. Signatures of 141 petitioners, representing 111 tax parcels and

\$6,039,450.00 in assessed valuation, appear on the 507.4-acre petition. The petition is signed by owners over a majority in assessed valuation of the real property in the annexation territory assessed upon the last preceding assessment roll.

163.8-Acre Petition

The 163.8-acre petition seeks to annex 71 tax lots from the unincorporated portion of the town into the village. The 163.8-acre petition comprises a six-paragraph petition with three signature pages. Each signature page is authenticated by a witness. The 163.8-acre petition also includes a metes and bounds description of the territory sought to be annexed, an annexation map depicting the 71 parcels and a certification of the town Assessor.

The total 2014 assessed value of the territory sought to be annexed is \$3,412,900.00. Signatures of 26 petitioners representing 24 tax parcels and \$1,710,400.00 in assessed valuation, appear on the petition. The petition is signed by the owners of a majority in assessed valuation of the real property in the annexation territory assessed upon the last preceding assessment roll as required by GML 703.

Defects in the sufficiency of the petitions have been raised by members of the public. The town board concludes that the defects claimed do not exist (see Exhibits 7–8).

The petitions are in order and satisfy the requirements of GML 703. Specifically:

- The petitions accurately identify and describe the territory sought to be annexed;
- The persons signing the petition are qualified to sign.
- The petitions state the approximate number of inhabitants of the territory sought to be annexed;

- The petitions are signed by the owners of a majority in assessed valuation of the real property in such territory assessed upon the last preceding assessment roll of, or utilized by, the local government or governments in which it is situated;
- The petitions are authenticated as to all the signatures upon each separate sheet by appending at the bottom of such sheet an affidavit of a witness on the subscription thereof;
- Attached to the petitions are certificates of the assessor responsible for preparing such assessment roll certifying that the petitions are signed by the owners of a majority in assessed valuation of the real property sought to be annexed assessed upon the last preceding assessment roll of, or utilized by, the local government or governments in which the territory is situated.

### **Over-all Public Interest**

The ultimate standard in determining whether to consent to the annexation is whether annexation is in the over-all public interest. This guiding principal is very broad and is not further defined in the annexation statutes. The courts tell us that “[a] determination of over-all public interest essentially entails focusing upon and weighing the benefit or detriment to the annexing municipality, the territory proposed to be annexed, and the remaining governmental unit from which the territory would be taken.”<sup>3</sup> “Benefit and detriment are customarily defined in terms of municipal services such as police and fire protection, health regulations, sewer and water service, public utilities and public education.”<sup>4</sup> This involves examining the fiscal impacts on both municipalities, particularly the relative ability of each to supply water, sewer and emergency services to that territory.

The municipalities should also determine whether there will be detriment to the municipality transferring the territory. Annexation should not be approved

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<sup>3</sup> *City of Saratoga Springs v Town of Greenfield*, 34 A.D.2d 364, 366 (3d Dept. 1970), *abrogated* by *City of Utica v Town of Frankfort*, 10 N.Y.3d 128 (2008).

<sup>4</sup> *Caruso v Moss*, 161 A.D.2d 1038, 1038–39 (3d Dept. 1990).

where the transferring municipality will be significantly injured as a result.<sup>5</sup> However, mere detriment is not enough; detriment must be balanced against benefit. In *City of Batavia v Town of Batavia*, the court, in finding an annexation to be in the over-all public interest, ruled that “[a]lthough the Town will suffer tax loss, the expeditious installation of water and sewer facilities must be deemed of paramount public concern.”<sup>6</sup>

Courts often focus on whether the annexation will aid in creating a cohesive community and will often find that an annexation is not in the over-all public interest if a cohesive community will not result or if an existing one will be disturbed.<sup>7</sup>

#### *Benefit or Detriment to the Village*

The Village of Kiryas Joel is a unique community and not solely because its residents share religious beliefs. More central to the uniqueness of the village is the adherence of its residents to a lifestyle linked to cultural identity and a close and walkable living environment. Yet Kiryas Joel is still very much a village, providing its residents with community water, sewer, fire protection and ambulance services. The residents living in the territory sought to be annexed, in overwhelming measure, share the lifestyle and culture of Kiryas Joel culture. The village will be greatly benefitted by annexation of this territory. It may then directly serve members of this community with municipal services directly rather than through more

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<sup>5</sup> Significance of detriment is noted in *City of Saratoga Springs v Town of Greenfield*, 34 A.D.2d 364, 367 (3d Dept. 1970), *abrogated by City of Utica v Town of Frankfort*, 10 N.Y.3d 128 (2008).

<sup>6</sup> *City of Batavia v Town of Batavia*, 45 A.D.2d 203, 206 (4th Dept. 1974).

<sup>7</sup> *Bd. of Trustees of Inc. Vil. of Warwick, Orange County v Town Bd. of Town of Warwick, Orange County*, 56 A.D.2d 928, 928 (2d Dept. 1977) (“The Court of Appeals has said that one of the elements to be considered in an annexation proceeding is ‘whether or not the annexing local government and the territory to be annexed have the requisite unity of purpose and facilities to constitute a community’ ”); *Matter of Common Council of City of Middletown v. Town Bd. of Town of Walkill*, 29 A.D.2d 561, 562; *Matter of Common Council of City of Gloversville v. Town Bd. of Town of Johnstown*, 32 N.Y.2d 1, 6.

cumbersome methods like contracting with a town water district (that requires the cooperation of the town), which district then delivers water to community residents.

The village will gain additional territory for potential development of housing and community buildings to accommodate a growing local population. As noted in the DGEIS, the land available for development within the village's current borders is limited, while the population continues to grow at a consistent rate from internal cultural dynamics. Inclusion of the territory within the village's borders will enable provision of services designed to support additional development including provision of municipal water and sewer and furnishing of culturally necessary infrastructure such as pedestrian facilities and public transportation. The village's growth has required major investments in infrastructure, which can be extended at relatively low marginal cost to the territory, while providing additional tax base to the village to support these investments. The village will also benefit by gaining additional tax base support for public safety services, such as police and EMS. The town board finds that the additional territory will help defray the village's higher costs, for example, for professional police and fire services.

The town board has also considered land use controls in the benefit/detriment balancing. Although this annexation includes no specific rezoning proposals or development project, the board finds that the annexation may cause future zoning regulations that enable greater, denser development than allowed in the town. The board also finds more permissive zoning regulations are not the sole reason for this annexation. Rather, this annexation is favored because it will enable development in locations where services are available and only the political boundary prevents such development. In addition, the village's land use regulations, if extended to the annexation territory, are likely to allow higher density development and hence higher tax rates and revenue to support better, more

comprehensive public services. Here, the town's Rural Residential zoning classification restricts the construction of the multi-family housing typical in the village near the annexation territory. If the annexation is completed, the village is expected, after further planning and environmental analysis, to zone the area in a manner consistent with that in the village near the annexation territory that can be provided to moderate and low income families.

The town board finds that the primary purpose of this annexation is not to circumvent zoning regulations, but to enable provision of infrastructure and services to the annexed territory fully expected to continue to grow. Much if not all of this growth will result from an overflow from the village. The annexation will enable construction of much-needed moderate- to low-income housing, and provision of civic infrastructure and services, which are not as easily accessible in the town outside of the village. In addition, the annexation will support "smart growth" principles identified in village and Orange County planning documents by supporting the concentration of development with available infrastructure to avoid suburban sprawl. The consistent population growth in the village is largely independent of available developable land, so the annexation is not anticipated to drive any further growth through an increase in-migration. Rather, the annexation will ease development or redevelopment pressure on the existing village territory, and will concentrate development within the village, as opposed to having it sprawled out across the county. The edge of the 163.8-acre annexation territory is the appropriate location, however, to end that high-density, pedestrian-friendly development and allow a transition to the more rural, low-density development that has long been the hallmark of the Town of Monroe.

#### *Detriment*

The village may experience detriments from the annexation. The village



will have to provide additional services, including expanded water supply, expanded police, fire and EMS services, increased responsibility for additional Village roads, sidewalks and street lights, and expanded waste pick-up. However, the costs for these services are expected to be commensurate and offset by increased tax revenues.

Overall, therefore, the Board finds that the annexation will produce substantial benefits to the Village of Kiryas Joel that greatly outweigh any expected detriments.

*Benefit or Detriment to the Town*

The town will benefit from the annexation of the 163.8-acre territory for several reasons. First, the town will be relieved of providing services to the annexed territory such as refuse pickup. Most of the land involved is nearly enclosed as *fingers* within the village and the provision of refuse pickup services there by the town is cumbersome and inefficient. This is not the case with the 507.4-acre territory where supplying refuse pickup services is easily accomplished.

The town would also benefit from the proposed annexation's orientation toward walkability and mass transit. Traffic studies indicate decreased traffic in the annexation territory if this proposed annexation were approved because, consistent with current practices within the village, residents within the annexation territory would not need to drive within the territory's low density development layout as they currently do. The edge of the 163.8-acre annexation territory is the appropriate location, however, to end that high-density, pedestrian-friendly development and allow a transition to the more rural, low-density development that has long been the hallmark of the Town of Monroe.

Although town roads in the annexation territory will become village roads

following the annexation, the village contracts with the town to maintain these roads and remove snow and ice and the town will see increased revenue under that contract.

The town and surrounding municipalities will also experience benefits relating to groundwater. The annexation territory relies on individual, private groundwater wells as a water source. After annexation, residents in the annexation territory would access water from the village's municipal supply, including the upcoming connection to the Catskill Aqueduct, which is projected to come on-line in 2017. This would relieve pressure on local groundwater resources for use by other residents of the Town of Monroe and neighboring towns.

#### *Detriment*

The town board has considered the fiscal consequences to the town. The fiscal projections in the DGEIS show that tax revenue to the town will diminish because residents in the annexation territory will no longer pay town outside village taxes. Although the town will lose this revenue, it will also see a reduction in the services required from the town. Given the likely increased road maintenance revenue mentioned above, overall the detriment from diminished tax revenue will be relatively small.

The edge of the 163.8-acre annexation territory is the appropriate location, however, to end that high-density, pedestrian-friendly development and allow a transition to the more rural, low-density development that has long been the hallmark of the Town of Monroe.

#### *Impact on the Territory Sought to be Annexed*

As noted below under the heading "Cohesive Community," those living in the territory sought to be annexed can better live and commune in a close and

walkable community; one with sidewalks, streetlights and houses located close together.

The town board finds that annexation will promote in the efficient delivery of water to the territory to be annexed based on the village's existing and planned municipal water supply sources. Water is provided in the annexation territory by private groundwater wells or through creation of a special district in the town and a contract with the village. Annexation will enable residents in the annexation territory to more easily and reliably connect to the village's municipal water system. This central water supply connection will also relieve some of the pressure on the local groundwater aquifer used by residents in nearby communities, including those in the annexation territory and others in the Town of Monroe outside of the village. The Board finds that improved water service to the annexation territory is a substantial benefit to the annexation territory.

Integrating the annexation territory with the village's upgraded transportation and pedestrian infrastructure also provides important safety, social and cultural benefits to the residents of the proposed annexation territory. Residents of the annexation territory who do not drive for cultural and lifestyle reasons have little pedestrian infrastructure such as sidewalks or sufficient nighttime illumination. The village has made providing sidewalks an infrastructure priority with street lights and six-foot-wide sidewalks kept fully snow-plowed during the winter. The town board finds that the annexation will enable pedestrian infrastructure in the annexation territory to be upgraded to village standards, and pedestrian safety would be greatly enhanced within the annexation territory.

The annexation territory will also benefit from greater access to other village services such as village parks and a senior dining program that are only accessible to village residents and public trash pickup five times per week to all homes, with two bulk pick-ups annually. Village residents also have access to the

Ezras Choilim Health Center and the Aishes Chayil Mothers Relief Center.

The edge of the 163.8-acre annexation territory is the appropriate location, however, to end that high-density, pedestrian-friendly development and allow a transition to the more rural, low-density development that has long been the hallmark of the Town of Monroe.

#### *Detriment*

The town board finds that the annexation will cause few detriments to the annexation territory. The board has examined the fiscal impacts of the annexation and finds that the annexation territory will see increased taxes. However, these increased taxes will be commensurate with increased services. Properties in the annexation territory pay town-wide taxes to the highway and town general fund and town taxes for fire protection, library services, municipal lighting and refuse collection services. As a result of annexation, the annexation territory residents would still pay town general fund and highway taxes; however, they would no longer pay property taxes for other services to the town; instead, they would pay village taxes for municipal services. Given the village's higher level of services and resulting taxes, the annexation territory residents will see some expected increase in tax burden.

Overall, therefore, the town board finds that the annexation will cause numerous, substantial benefits to the annexation territory, and that any possible detriments such as increased taxes will be commensurate with improved public services.

#### *Shape and Contour of the Territory Sought to be Annexed*

The shape and contour of the territory to be annexed is relevant to our deliberations. Annexations that result in *baroque* or unnatural boundaries have been

found not to be in the over-all public interest.<sup>8</sup> The result of allowing the annexation here would remove strained and unnatural boundaries that leave members of the Kiryas Joel Hasidic community living within *fingers* of the town extending into the village. Those residents and the nature of land use development in the area within those fingers have little in common with most of the unincorporated portions of the town and much in common with the village and its residents.

The 163.8-acre petition shows no irregular boundaries, and demonstrates an appropriated-scaled potential for extension of water, sewer, and transportation infrastructure. The petition presents an especially compelling case for annexation in this respect because many parcels are bounded by the village on three sides and on their fourth side by the Town of Woodbury. Annexation of these parcels into the village will remove existing *islands* or *fingers* within the village and knit together politically what is already a unified community culturally—factors that the town board finds favor the overall public interest supporting the annexation.

### Cohesive Community

The courts tell us to focus on whether the annexation will aid in creating a cohesive community and will often find that an annexation is not in the over-all public interest if a cohesive community will not result or if an existing one will be disturbed.<sup>9</sup>

The Village of Kiryas Joel is a cohesive—indeed, insular—community. That

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<sup>8</sup> *Bd. of Trustees, Vil. of Pomona v Town of Ramapo*, 171 A.D.2d 861, 863 (2d Dept. 1991).

<sup>9</sup> *Bd. of Trustees of Inc. Vil. of Warwick, Orange County v Town Bd. of Town of Warwick, Orange County*, 56 A.D.2d 928, 928 (2d Dept. 1977) (“The Court of Appeals has said that one of the elements to be considered in an annexation proceeding is ‘whether or not the annexing local government and the territory to be annexed have the requisite unity of purpose and facilities to constitute a community’ ”); *Matter of Common Council of City of Middletown v. Town Bd. of Town of Wallkill*, 29 A.D.2d 561, 562; *Matter of Common Council of City of Gloversville v. Town Bd. of Town of Johnstown*, 32 N.Y.2d 1, 6.

community already extends beyond present village boundaries. Annexation here will move the village boundary out and around that cohesive community bringing the residents living there within the village that defines their culture and lifestyle, rather than leaving them outside of that political boundary while fully within the existing cultural boundary. The edge of the 163.8-acre annexation territory is the appropriate location, however, to end that high-density, pedestrian-friendly development and allow a transition to the more rural, low-density development that has long been the hallmark of the Town of Monroe.

*Annexation to Avoid Existing Zoning Restrictions*

Some have urged our board to deny this annexation request because annexation will allow a greater density of development under the village zoning law than is permitted under the town zoning law. Relying upon *Vil. of Skaneateles v Town of Skaneateles*,<sup>10</sup> they claim that annexation under such circumstances is impermissible. *Skaneateles* does indeed add likely zoning changes to the over-all public interest evaluation. However, what *Skaneateles* found impermissible is annexation to avoid zoning restrictions, not annexation that will merely result in such avoidance.

Of even higher authority is *City Council of City of Mechanicville v Town Bd. of Town of Halfmoon*,<sup>11</sup> a decision affirmed by the court of appeals, in which the appellate division, third department ruled in clear terms that:

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<sup>10</sup> *Vil. of Skaneateles v Town of Skaneateles*, 115 A.D.2d 282 (4th Dept. 1985) (there is "no precedent approving the use of annexation as a device by which the owner of land in one municipality may escape the effect of that municipality's local legislation by having the land transferred to an adjoining municipality").

<sup>11</sup> *City Council of City of Mechanicville v Town Bd. of Town of Halfmoon*, 32 A.D.2d 152, 156 (3d Dept. 1969) *affd*, 27 N.Y.2d 369 (1971).

Annexation cannot be considered as being in the over-all public interest where the only benefit to be derived is expansion room for the municipality seeking annexation while the annexed area and the area out of which it is to be carved, will be adversely affected.<sup>12</sup>

Where other benefits flow from annexation and no significant adverse effects will all on the transferring municipality, that zoning restriction avoidance might have a motivating factor in petitioning for annexation, does not prohibit approval of the annexation. Application of the over-all public interest test requires a far more nuanced balancing of relative benefit and detriment than the narrow and myopic test we are urged to apply.

The primary purpose of the annexation, as represented by the petitioners, is to gain access to improved local government services, integrate with village infrastructure such as sidewalks and street lighting, which will dramatically improve pedestrian safety, and access village emergency services, which can respond more quickly to the annexation territory, and can offer service in both English and Yiddish, whereas the Town of Monroe has not provided such services. Therefore, the board finds that the annexation will likely enable greater density development in an area where services can be easily extended to serve the expected inhabitants while increasing the tax base of the village, a substantial benefit to the village.

The edge of the 163.8-acre annexation territory is the appropriate location, however, to end that high-density, pedestrian-friendly development and allow a transition to the more rural, low-density development that has long been the hallmark of the Town of Monroe.

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<sup>12</sup> *City Council of City of Mechanicville v Town Bd. of Town of Halfmoon*, 32 A.D.2d 152, 156 (3d Dept. 1969) *affd*, 27 N.Y.2d 369 (1971). See, more recently, *Bd. of Trustees, Vil. of Spring Val. v Town of Ramapo*, 264 A.D.2d 519, 520–21 (2d Dept. 1999).

### School District Boundary

The annexation will not automatically reconfigure the boundaries of the two school districts in the area, and therefore, the town board has considered both the effects to the districts if their boundaries remain as they are and the effects if the boundaries are changed to conform to the new municipal boundaries. If the annexation occurs, but school district boundaries do not change, the village residents and expected additional inhabitants of the annexation territory are unlikely to attend Monroe-Woodbury Central School District schools (“MWCS D”), attending instead private, parochial schools, in similar fashion as occurs within the village. However, private school students are entitled to transportation, remedial services, books, and other services provided by the public school district. Therefore, if the annexation enables additional growth in the annexation territory but the territory remains in the MWCS D, additional services will be required. However, if the territory remains in the MWCS D as it develops, increased property valuations and therefore additional tax revenues should provide for the increased services demanded from the projected additional families in the annexation territory once it develops.

The specter of the problems under which the East Ramapo School District now labors<sup>13</sup> surfacing here has been argued by some as a near certainty. We do not see it that way. East Ramapo has no second school district. Adjustment of the school district boundary to conform to any new municipal boundary (avoiding the East Ramapo problem) is authorized by State Law [Education Law Section 1507] and may well—indeed, should—occur. Resolution of that issue rests squarely in

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<sup>13</sup> Hasidic voters in the East Ramapo School District have elected a school board that has dramatically reduced services and spending to the claimed disadvantage of non-Hasidic students in Ramapo schools. Hasidic families do not send their students to those schools.



the control of the Monroe-Woodbury School District,<sup>14</sup> the Kiryas Joel School District having already resolved to adjust the district boundary

*Claimed Establishment Clause Violation*

Daniel Richmond, Esq., counsel to a grassroots organization opposed to this annexation known as United Monroe, urges our board to deny annexation contending that any town board action for annexation would violate the Establishment clause of the United States Constitution. Mr. Richmond bases his argument on language within the 1994 United States Supreme Court decision in *Board of Education of Kiryas Joel Village School District v. Grumet, et al.*, 512 U.S. 687 (1994). While the U.S. Supreme Court set aside the legislation passed by New York State that created a separate school district solely to serve the Village of Kiryas Joel's distinctive population on the ground it violated the Establishment clause, Mr. Richmond misconstrues the reason the U.S. Supreme Court did so. Elaboration is in order.

In the late 1980s Kiryas Joel village leaders complained to the State of New York that handicapped students residing within the village then attending special education classes within public schools outside the village experienced "panic, fear and trauma... in leaving their own community and being with people whose ways were so different."<sup>15</sup> Because of the inability of the Monroe-Woodbury School District to find another means of accommodating the needs of the village's handicapped students, by 1989 only one child from Kiryas Joel was attending Monroe-

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<sup>14</sup> The New York State Education Law makes provision for voluntary adjustment of school district boundaries. I disagree with the Monroe-Woodbury School District's argument that these provisions are cumbersome and have no application here.

<sup>15</sup> *Board of Education of Kiryas Joel Village School District v. Grumet, et al.*, 512 U.S. 687, 692 (1994)

Woodbury's public schools<sup>16</sup>.

The State of New York, responding to these complaints, enacted Executive Law Section 71 in 1993. The United States Supreme Court found that enactment of that statute constituted a “manipulation of the franchise for this district limited to Satmars, giving the sect exclusive control of the political subdivision.”<sup>17</sup> This resulted in creating “an electorate defined by common religious belief and practice, in a manner that fails to foreclose religious favoritism..., cross[ing] the line from permissible accommodation to impermissible establishment.”<sup>18</sup>

The government act that violated the Establishment clause was the enactment of legislation specifically tailored to satisfy the desires of the Satmar community in a fashion distinct from any traditional method of creating a school district under the education law. And, while the law made no reference to the religious beliefs of the Satmar community, it referred specifically to the residents of the territory of the Village of Kiryas Joel and identified the recipients of governmental intervention by reference to doctrinal adherence so the boundary lines of the Kiryas Joel School District divided residents according to religious affiliation under an unusual and special legislative act.

In her concurring opinion, Justice O'Connor noted—significantly in our context—that creation of the Village of Kiryas Joel under existing provisions of state law did not violate the Establishment clause because the legislation authorizing the creation of a village was general in its application throughout the state and was

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<sup>16</sup> *Board of Education of Kiryas Joel Village School District v. Grumet, et al.*, 512 U.S. 687, 693 (1994).

<sup>17</sup> *Board of Education of Kiryas Joel Village School District v. Grumet, et al.*, 512 U.S. 687, 698 (1994).

<sup>18</sup> *Board of Education of Kiryas Joel Village School District v. Grumet, et al.*, 512 U.S. 687, 710 (1994).

not tailored or written specifically to assist the Satmars in incorporating into a village, pointing out that the “Satmars’ living arrangements were accommodated by the right—a right shared with all other communities, religious or not, throughout New York—to incorporate themselves as a Village.”<sup>19</sup>

No violation of the Establishment clause existed when Kiryas Joel incorporated as a village under existing state law. However, the Establishment clause was violated when the state enacted specially tailored legislation for the benefit of a religious community allowing it to create a unique and religious-tainted school district.

When the challenge to the legislature’s enactment of a second law authorizing the re-creation of the Kiryas Joel School District following the U.S. Supreme Court decision was brought, echoes of the underpinning of the Supreme Court opinion can be found in the New York Court of Appeals decision. The New York Court of Appeals found the second enactment to violate the Establishment clause because the “qualifying criteria and the definitional cut-off, though perhaps well intentioned and not entirely devoid of secular justification, [were] drawn in such a way that ‘the benefit flows only to a single sect’ [citing *Board of Education of Kiryas Joel Village School District v. Grumet, et al.*, 512 U.S. 687, 705(1994)].”<sup>20</sup> In reaching this conclusion, the Court of Appeals—as had Justice O’Connor—took pains to contrast the difference between a law of general application and special legislation intended to benefit a religious group:

Contrasting the constitutionally suspect creation of the Kiryas Joel School District with the process by which the Village itself has been formed pursuant to a religion-neutral State law of general applicability (see, Village Law § 2-

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<sup>19</sup> *Board of Education of Kiryas Joel Village School District v. Grumet, et al.*, 512 U.S. 687, 714 (1994).

<sup>20</sup> *Grumet v. Cuomo*, 90 N.Y.2d 57, 73 (1997).

202), the [United States Supreme] Court concluded: “the religious community of Kiryas Joel did not receive its new governmental authority simply as one of many communities eligible for equal treatment under a general law, we have no assurance that the next similarly situated group seeking a school of its own will receive one” [*Board of Education of Kiryas Joel Village School District v. Grumet, et al.*, 512 U.S. 687, 703 (1994)].

Here, no special legislation has been passed by the state, the Village of Kiryas Joel or the Town of Monroe. Annexation is sought under laws of general applicability that entitle property owners to petition for annexation of their property into an adjoining municipality’s territory. That such annexation, in the circumstances presented here, will cause the enlargement of the Satmar religious community constitutes no violation of the Establishment clause any more than the creation of the Village of Kiryas Joel under the general provisions of the village law constituted a violation of the Establishment clause when the village was incorporated. When seen in this light, the arguments of Mr. Richmond fail.

#### *Town of Monroe Standards of Ethics*

Mr. Richmond argues further on behalf of United Monroe that a vote for annexation would violate the Town of Monroe Standards of Ethics in Section 4-4(J)(1).

Mr. Richmond is incorrect in his contention for essentially the same reasons set forth above. The Monroe Code of Ethics was not legislation enacted specifically to satisfy the desires of the Satmar Hasidic community to live an insular existence. Nor does that code require segregation based upon creed. Instead, the Monroe ethical standards set forth rules applicable to all issues relating to town government and were not tailored or written specifically to assist the Satmar religious community .

A vote for annexation would not cause voluntary segregation. All of the

property owners that have petitioned for annexation are already members of the Satmar religious sect. A vote for annexation would merely move the village boundary line outward to include the members of that community within the Village of Kiryas Joel. That such annexation, in the circumstances presented here, might cause a potential enlargement of the Satmar religious community (by an increase in the allowable housing density that might lead to more housing units within the area annexed) constitutes no violation of the Monroe standard of ethics because the annexation does not discriminate or cause voluntary segregation based upon creed. If such voluntary segregation exists, it exists already and the relocation of a municipal boundary line is not the cause of its existence.

**Decision, Resolution and Order**

In employing the over-all public interest test of General Municipal Law Section 703, the town board hereby decides, resolves and orders as follows:

1. The petition seeking to annex 507.4 acres of land from the unincorporated portion of the Town of Monroe into the Village of Kiryas Joel (see petition annexed as Exhibit 1) is filed by owners of a majority in assessed valuation; it is not an over 20% of qualified voters petition.
2. The petition seeking to annex 163.8 acres of land from the unincorporated portion of the Town of Monroe into the Village of Kiryas Joel (see petition annexed as Exhibit 2) is filed by owners of a majority in assessed valuation; it is not an over 20% of qualified voters petition.
3. The petitions are in order and satisfy the requirements of General Municipal Law Section 703.
4. It is not in the over-all public interest to allow annexation of the 507.4-

acre territory and the town board refuses to consent thereto. That petition is hereby disapproved.

5. It is in the over-all public interest to allow annexation of the 163.8-acre territory in question and the town board consents thereto and approves that annexation.
6. The village and the town have not entered into an agreement under GML §§ 707(2) or 708(2), and therefore, as required by GML § 711(a)(2), in assessing the overall public interest, the town board has considered and based its findings on the assumption of indebtedness and disposition of property prescribed in GML §§707(1) and 708(1), respectively. Upon annexation, all such town property of the types specified in GML § 707(1) will become village property, exclusive of any real and personal property or rights in real and personal property of, or acquired for, special or improvement districts in such territory. The town board finds this includes, without limitation, certain town roads in the petitions. Similarly, the village will assume the portion of indebtedness attributable to the territory to be determined in the manner specified in GML §708 to be computed as of the date of the annexation. The town board finds that the disposition of property and the village's assumption of indebtedness are both in the overall public interest.


Councilman MC Quade moved that the Town of Monroe consent to the 163.8-acre annexation the town board hereby finding that it is in the over-all public interest and that it disapprove the 507.4-acre petition, the town board hereby finding that it is not in the over-all public interest to grant that petition.

Councilman Colon seconded that motion. The motion was duly put to a vote on roll call vote as follows:

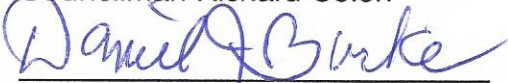
	Aye	Nay
Councilman Richard Colon	X	
Councilman Daniel Burke	X	
Councilman Dennis McWatters		X
Councilman Gerard McQuade, Jr.	X	
Supervisor Harley E. Doles III	X	

**So Ordered**


Dated: September 8, 2015

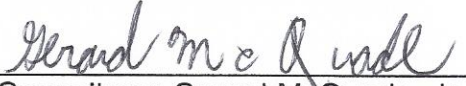
  
Mary Ellen Beams, Town Clerk

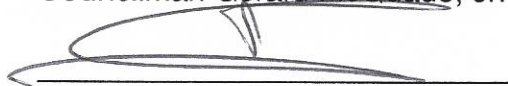
\_\_\_\_\_  
Councilman Richard Colon

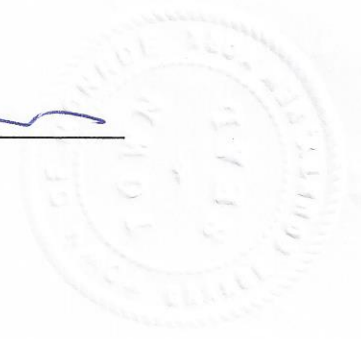


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Councilman Daniel Burke

  
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Councilman Dennis McWatters

  
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Councilman Gerard McQuade, Jr.

  
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Supervisor Harley E. Doles III



STATE OF NEW YORK :  
COUNTY OF ORANGE : ss.:

I, Mary Ellen Beams, Clerk of the Town of Monroe, in the County of Orange, New York, DO HEREBY CERTIFY that I have compared the preceding decision, resolution and order with the original thereof filed in my office on September 8, 2015, and that the same is a true and correct copy of said original and of the whole thereof (save exhibits) so far as the same relate to the subject matters referred to therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said town this 8<sup>th</sup> day of September, 2015.



Mary Ellen Beams, Town Clerk

