



In the Matter of the Objections

-of-

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Glen Wild Land Company, LLC, Objector to the Petition Purporting to Request the Taking of a Referendum Vote upon a Resolution No. 78, Duly Adopted by the Town Board of the Town of Thompson on January 3, 2023, for the Purpose of Approving an Extension of the Consolidated Rock Hill-Emerald Green Sewer District in the Town of Thompson, Sullivan County, New York, and Further Approving the Construction of the Improvements Proposed Therefore.

**TO THE TOWN CLERK OF THE TOWN OF THOMPSON, COUNTY OF SULLIVAN,
STATE OF NEW YORK: MADAM CLERK:**

The undersigned, Glen Wild Land Company, LLC, a duly qualified property owner of taxable real property (identified on the Tax Map of the Town of Thompson as SBLs 32-1-6, 32-1-7, 32-1-9.2 and 32-1-10,) situate in the proposed extended district of the Town of Thompson, Sullivan County, New York, does hereby object to the Referendum Petition filed with the Town Clerk of the Town of Thompson on February 1, 2023, purporting to request the conduct of a referendum vote of the qualified electors of the Town of Thompson upon Resolution No. 78, duly adopted by the Town Board of the Town of Thompson on January 3, 2023, for the purpose of approving an extension of the consolidated Rock Hill-Emerald Green Sewer District in the Town of Thompson, Sullivan County, New York, and further approving the construction of the improvements proposed therefore.

The undersigned alleges that, as a threshold matter, the proposed sewer district extension was erroneously and unnecessarily approved subject to permissive referendum and said Resolution No. 78 should be rescinded and reauthorized pursuant to Town Law and notwithstanding this error, the Referendum Petition is insufficient, void and not in accordance with the provisions of the Town Law of the State of New York and the Election Law of the State of New York in that:

OBJECTION NO. 1

First, pursuant to Town Law Article 12 (NY CLS Town § 190), improvement district establishment or extension initiated by petition are only subject to permissive referendum where the district extension is proposed within an incorporated village. Notably, NY CLS Town § 194, governing the consideration and approval of such a petition for district establishment or expansion, does not require or even reference permissive referenda.

By contrast, the “alternative procedure” set forth in Town Law Article 12-a (NY CLS Town § 209), requires that the establishment or expansion of improvement districts initiated by the Town Board’s own motion and wholly at the expense of the district be subject to permissive referendum. (NY CLS Town § 209-e). The availability of permissive referendum pursuant to Article 12-a is reasonable given that the resulting establishment or extension is at the expense of the district;

accordingly, the proposed action presents a disproportionate effect or special burden for owners of taxable real property within the district who are thus permitted an opportunity to vote on the same. See, generally, Lane v. Town of Oyster Bay, 149 Misc. 2d 237, 240, 564 N.Y.S.2d 655, 657 (Sup. Ct. 1990). This is simply not the case for improvement district establishment or extensions pursuant to Town Law Article 12.

New York courts have repeatedly confirmed this distinction between Town Law Article 12 and Article 12-a. See, e.g., In re Ingrid Beer v. Town of New Paltz, 2020 NY Slip Op 00191, ¶ 1, 179 A.D.3d 1238, 1241-42, 118 N.Y.S.3d 755, 760 (App. Div.) (“[S]ince the establishment of the district was initiated via a citizens' petition pursuant to Town Law article 12, as opposed to the Town Board's own motion pursuant to Town Law article 12-a, the Town Board was not required to conduct a permissive referendum regarding the formation of this ‘no cost improvement district’”); Matter of Angelis v. Town of New Balt, 2006 NY Slip Op 5185, ¶ 3, 30 A.D.3d 940, 943, 818 N.Y.S.2d 635, 638 (App. Div.) (upholding a Town Board’s approval of a petition for the establishment of a water district under Article 12 without referendum).

The subject proposed extension of the consolidated Rock Hill-Emerald Green Sewer District in the Town of Thompson, Sullivan County, New York was initiated by petition and will not result in increased costs for existing users within the District and, therefore, falls within the purview of Town Law Article 12 (NY CLS Town § 190) and not the alternative procedure of Article 12-a. As this extension is not proposed within an incorporated village, the Town Board erred in adopting Resolution No. 78 subject to permissive referendum; for this reason alone, the aforesaid Referendum Petition should be deemed invalid and void.

OBJECTION NO. 2

Even assuming that the proposed action was subject to permissive referendum, which it was not, the signatures on the Referendum Petition are not subscribed as required, in the manner provided in the Town Law for Referendum on Petition which expressly requires, at Article 12-A, §209-e(3), that the petition be “...signed, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner prescribed by the election law for the authentication of nominating petitions, by the owners of taxable real property situate in the proposed district or proposed extended district, as shown upon the latest completed assessment-roll of said town, in number equal to at least five per cent of the total number of such owners, or by one hundred of such owners, whichever is the lesser. For the purposes of this section, a corporate owner of such taxable real property shall be considered one owner for the purposes of a petition requesting a referendum and shall be entitled to one vote to be cast by an officer or agent of the corporation or other duly authorized person designated by appropriate resolution of such corporation...” To the extent that the Referendum Petition filed herein fails to conform to the said statutory requirement in the stated manner, the said Referendum Petition is invalid.

OBJECTION NO. 3

The Referendum Petition, viewed as a whole, so fails to conform to the requirements of the Town Law as not to be in substantial compliance therewith. More specifically, the Referendum Petition contains other defects and irregularities which, when viewed as a whole, in the light both of the form of petition prescribed in the Town Law, compels the conclusion that the said Referendum Petition fails to substantially meet the requirements of the Town Law, and, as such, should be declared invalid.

By way of illustration, within Sheets 1 through 73 of the Referendum Petition the following defects and irregularities have been identified:

- (i) Upon information and belief, the form Referendum Petition purports to list “qualified voters” in the Town of Thompson and does not specify that the petitioners are owners of taxable real property situate within the specific extension district, here the consolidated Rock Hill-Emerald Green Sewer District in the Town of Thompson, Sullivan County, New York. Town Law Article 12-A, §209-e(3), requires that the petition be “...signed, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner prescribed by the election law for the authentication of nominating petitions, by the owners of taxable real property situate in the proposed district or proposed extended district...” (emphasis added). The Office of the New York State Comptroller has confirmed that “qualified voters” for the extension of an improvement district are only those voters who own taxable real property within the specific extension district. See Office of the New York Comptroller, Opinion 92-39.
- (ii) Upon information and belief, there are 27 petition sheets, signed by a witness who is not a resident of the district, as required by New York Town Law §209-e and New York Election Law. Accordingly, the 97 signatures contained in these petition sheets are invalid.
- (iii) Upon information and belief, there are 15 petition sheets signed by a witness who is not identified as a Trustee to the Trust which owns the real property identified, as required by New York Town Law §209-e and New York Election Law. Accordingly, the 70 signatures contained in these petition sheets are invalid.
- (iv) Upon information and belief, contrary to the requirements of New York Town Law and Election Law, there are at least 42 individual signatures on the Referendum Petition by persons who are not owners of the identified taxable real property situate in the proposed extended district as shown upon the latest completed assessment-roll of the Town of Thompson. As such, these 42 signatures are invalid.
- (v) Upon information and belief, contrary to the requirements of New York Town Law and Election Law, there are at least 129 individual signatures on the Referendum Petition

where the taxable real property identified opposite his/her signature is not situate in the proposed extended district. As such, these 129 signatures are invalid.

- (vi) Upon information and belief, contrary to the requirements of New York Town Law and Election Law, there is at least 1 individual entry on the Referendum Petition by persons which is missing a proper signature. As such, this signature is invalid.
- (vii) Upon information and belief, contrary to the requirements of New York Town Law and Election Law, there is at least 1 individual entry on the Referendum Petition by a person who signed a previous petition sheet. As such, this duplicate signature is invalid.

OBJECTION NO. 4

By reason of Objection Nos. 2 through 3, inclusive, the said Referendum Petition does not set forth valid signatures of the owners of taxable real property situate in the proposed district or proposed extended district, as shown upon the latest completed assessment roll of said Town, in number equal to at least five per cent of the total number of such owners, or by one hundred of such owners, whichever is less. As such, the request for a permissive referendum on Resolution No. 78 must fail.

Dated: New York, New York

February 6, 2023

Respectfully submitted,

Robert Berman

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF SULLIVAN) ss.:

Robert Berman, being duly sworn, deposes and says:

I am the General Partner of Avon Road Partnership L.P., majority owner and Manager of Glen Wild Land Co. LLC, the Objector to the Petition Purporting to Request the Taking of a Referendum Vote upon a Resolution No. 78, Duly Adopted by the Town Board of the Town of Thompson on January 3, 2023, for the Purpose of Approving an Extension of the Consolidated Rock Hill-Emerald Green Sewer District in the Town of Thompson, Sullivan County, New York, and Further Approving the Construction of the Improvements Proposed Therefore. I have read the annexed Objections, know the contents thereof, and the same is true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters, I believe them to be true. My belief, as to those matters not stated upon knowledge, is based upon material contained in my file.



Robert Berman

Sworn to before me this
6th day of February, 2023



NOTARY PUBLIC

STEVEN VEGLIANTE
Notary Public-State of New York
Sullivan County Clerk #2307
My Commission Expires 7/5/20 23