

NY CLS Vill § 2-206

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§ 2-206. Proceeding on hearing

1.The supervisory, or supervisors if a joint hearing, with whom the petition or copies thereof, were filed, shall meet at the time and place specified in such notice and shall hear objections which may be presented as to the legal sufficiency of the petition for incorporation based upon any of the following grounds:

- a.That a person signing such petition was not qualified therefor;
- b.If it is alleged that the petition is submitted on the basis that the persons signing such petition constitute twenty per cent of the residents in such territory qualified to vote for officers of a town in which all or part of such territory is located, that such allegation is false;
- c.If it is alleged that the petition is submitted on the basis that the persons signing such petition are the owners of more than fifty percent in assessed valuation of the real property in such territory or in full valuation of the real property in each part of each town in such territory and computed separately for each such part, as the case may be, assessed upon the last completed assessment roll or rolls of the town or towns in which all or part of such territory is located, that such allegation is false;
- d.That such territory is part of a city or village;
- e.That if such territory is less than an entire town, it contains more than five square miles and the limits of such territory are not coterminous with the entire boundaries of one school, fire, fire protection, fire alarm, town special or town improvement district and the limits of such territory are not coterminous with parts of the boundaries of more than one school, fire, fire protection, fire alarm, town special or town improvement district, all of which are wholly contained within such limits and within one town;
- f.That such territory does not contain a population of at least five hundred regular inhabitants;
- g.That the petition in any other specified respect does not conform to the requirements of this article.

2.The supervisor of the town in which the entire territory, or the greatest portion of such territory is located shall conduct the hearing.

3.All objections must be in writing and signed by one or more residents qualified to vote for town offices a town in which all or part of such territory of the proposed village is located. Testimony as to objections may be taken at the hearing which shall be reduced to writing and subscribed by those testifying. The burden of proof shall be on the objectors. All written objections and signed testimony shall clearly state the name and address of the objector.

4.The hearing may be adjourned but must be concluded within twenty days from the date fixed in the notice of hearing.

History

Add, L 1972, ch 892, eff Sept 1, 1973; amd, L 1973, ch 976 § 1, eff Sept 1, 1973; L 1975, ch 561, eff Aug 1, 1975; L 1985, ch 167, § 1, eff June 4, 1985.

Annotations

Notes

Editor's Notes:

Substance transferred from § 3–306.

Amendment Notes:

1985. Chapter 167, § 1 amended:

Sub 1, par b, by deleting “resident owners of real property” and “as residents thereof”.

Notes to Decisions

1. In general

2. Under former § 3-306

1. In general

In action to stay supervisor of town from performing functions which Village Law imposed upon him in incorporation of village, petitioner's failure to serve process on designated agents of embryonic village deprived court of jurisdiction to entertain petition. [In re Incorporation of Purchase, 80 Misc. 2d 541, 363 N.Y.S.2d 183, 1974 N.Y. Misc. LEXIS 1911 \(N.Y. Sup. Ct. 1974\).](#)

Petitioners were not barred from bringing Article 78 proceeding, seeking to vacate village incorporation election due to deficiency of map posted along with statutorily required notice of election, on ground that challenge to map should have been raised at hearing under CLS Vill § 2-206, since hearing under that statute precedes posting of notice of election. [In re Application of Regula, 138 Misc. 2d 634, 524 N.Y.S.2d 595, 1988 N.Y. Misc. LEXIS 54 \(N.Y. Sup. Ct. 1988\).](#)

Compliance with State Environmental Quality Review Act (CLS ECL Art 8) is not required by [6 NYCRR § 617.11](#) as condition precedent to proposed incorporation of village, where incorporation will merely create separate government for some residents and will not result in any construction, or commencement of any new projects within boundaries of new village. [O'Keeffe v Bonelli, 170 Misc. 2d 218, 654 N.Y.S.2d 1009, 1996 N.Y. Misc. LEXIS 543 \(N.Y. Sup. Ct. 1996\).](#)

Town supervisor properly denied a petition to incorporate a proposed village, because the petition was legally insufficient in that it failed to substantiate the allegation that the proposed village territory contained a population of at least 500 regular inhabitants and did not include a list of the regular inhabitants of the territory sought to have been incorporated. *Baker v Heaney*, 15 A.D.3d 577, 791 N.Y.S.2d 573, 2005 N.Y. App. Div. LEXIS 1855 (N.Y. App. Div. 2d Dep't), app. denied, 5 N.Y.3d 702, 800 N.Y.S.2d 373, 833 N.E.2d 708, 2005 N.Y. LEXIS 1443 (N.Y. 2005).

Objectors failed to meet their burden of proof when objecting that the roughly 240 names presented by an incorporation should have been included in the list that accompanied a petition for incorporation of a village. The incorporation's conclusory assertion of fact was not enough for the objectors to meet their [N.Y. Village Law § 2-206\(3\)](#) evidentiary burden of establishing that those 240 persons actually were “regular inhabitants” of the proposed village in prior to the petition and attachments being assembled in preparation for circulating copies for signatures.

[*Defreestville Area Neighborhoods Ass'n v Tazbir*, 793 N.Y.S.2d 743, 7 Misc. 3d 412, 2005 N.Y. Misc. LEXIS 159 \(N.Y. Sup. Ct.\)](#), aff'd, [*23 A.D.3d 70, 800 N.Y.S.2d 474, 2005 N.Y. App. Div. LEXIS 8790 \(N.Y. App. Div. 3d Dep't 2005\)*](#).

Petition for incorporation was not invalidated by the fact that a portion of the land sought to be included in the proposed village had been annexed by another town, because the annexation had not occurred at the time the petition was submitted. [*Defreestville Area Neighborhood Ass'n v Tazbir*, 23 A.D.3d 70, 800 N.Y.S.2d 474, 2005 N.Y. App. Div. LEXIS 8790 \(N.Y. App. Div. 3d Dep't\)](#), app. denied, 5 N.Y.3d 711, 2005 N.Y. LEXIS 3709 (N.Y. 2005).

2. Under former § 3-306

Although this section sets forth certain grounds upon which objections to incorporation of a new village may be predicated, the supervisor is not thereby precluded from considering other objections, such as delay in attaching to the petition a description of the area. [*Plummer v Dominy*, 18 A.D.2d 190, 239 N.Y.S.2d 158, 1963 N.Y. App. Div. LEXIS 4127 \(N.Y. App. Div. 2d Dep't\)](#), app. denied, 13 N.Y.2d 594, 1963 N.Y. LEXIS 1901 (N.Y. 1963).

Former sections 3-302 and 3-306 of the Village Law limiting participation in proceedings preliminary to incorporation to landowners did not amount to a violation of due process, especially in light of fact that unconstitutionality of Village Law former § 3-316 was recognized and all qualified voters were permitted to vote on question of incorporation. [*Gibbs v Howell*, 40 A.D.2d 322, 340 N.Y.S.2d 53, 1973 N.Y. App. Div. LEXIS 5242 \(N.Y. App. Div. 3d Dep't 1973\)](#).

An objector or objectors questioning the sufficiency and accuracy of the list of inhabitants of the territory have the burden of proof under this section of showing that less than one-half of the names on the consents are resident freeholders. [*In re Hampton Bays*, 40 Misc. 2d 434, 243 N.Y.S.2d 296, 1963 N.Y. Misc. LEXIS 1638 \(N.Y. County Ct. 1963\)](#).

Opinion Notes

Agency Opinions

1. In general

A town may not use town funds or town employees to prepare a proposed budget or other document for the purpose of showing residents of a proposed village the cost of incorporating or operating a village since a town has no legal standing to oppose the creation of a village and its intrusion into the incorporation process would be a partisan political act rather than an exercise of its proper governmental powers. 1980 Op St Compt File #762.

We reaffirm the views expressed in Opinion No. 80-762 and it remains our position that a town may not use town funds or town employees to prepare a proposed budget or other documents for the purpose of showing residents of a proposed village the cost of incorporating and operating a village. 1981 Op St Compt File #81-26.

Research References & Practice Aids

Jurisprudences:

49 NY Jur 2d Elections § 3.

Hierarchy Notes:

[NY CLS Vill](#)

[NY CLS Vill, Art. 2](#)

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