

**TOWN OF SOUTHAMPTON**

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**MEMORANDUM**

To: Sundy Schermeyer, Town Clerk  
From: Kathleen Murray, Deputy Town Attorney  
Date: June 10, 2019  
Re: Petition to Incorporate East Quogue

Pursuant to Village Law §2-208, attached please find the Supervisor's Decision as it relates to the April 3, 2019, Petition to incorporate East Quogue.

Copies of the notice of hearing, together with affidavits of posting and publishing, the written objections, and the minutes of the proceeding taken on the hearing, including signed testimony, are already part of your file.

Thank you.

**TOWN OF SOUTHAMPTON  
NEW YORK**

-----X  
**In the Matter of the Petition to Incorporate the  
Village of East Quogue**

**SUPERVISOR'S  
DECISION**

-----X  
A petition for the incorporation of certain territory in the Town of Southampton (the "Town") as the Village of East Quogue (the "Village"), dated April 3, 2019 (the "Petition"), having duly been received by me on April 3, 2019, and after due posting and publication in accordance with Village Law §2-204, a hearing to consider the legal sufficiency of such petition having been held on May 13, 2019, and May 20, 2019, at the East Quogue Elementary School in accordance with Village Law §2-206, with written submissions accepted until May 31, 2019, and all testimony and objections having been heard,

NOW THEREFORE, I hereby determine, for the reasons more fully set forth below, that the aforesaid petition does not comply with the requirements of Village Law Article 2.

**BACKGROUND**

The Petition was duly filed with my office on April 3, 2019. Thereafter, as mandated by §2-204 of the Village Law, I caused to be published and posted, a notice of hearing to consider the legal sufficiency of the Petition. Hearings were held at the East Quogue Elementary School on May 13 and May 20, 2019, at which time speakers both for and against said Petition were heard, and transcripts of the proceedings were made. The record was kept open for written comments, objections, and/or responses to be submitted to the Town Clerk's Office by 4:00 p.m. on May 31, 2019.<sup>1</sup>

**OBJECTIONS**

Section 2-206(1) of the Village Law sets forth the grounds upon which the legal sufficiency of a Petition may be challenged. As it relates to the proposal herein, the possible grounds for objection are, in sum, as follows:

- (1) That a person signing such petition was not qualified to do so;
- (2) That the number of persons who signed such petition is less than 20% of the residents of the proposed village territory qualified to vote for town officers;
- (3) That such territory is part of a city or village;

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<sup>1</sup> Written submissions were received by the Town Clerk's Office during this time frame from Michael Mirino, Jim Dreeben, Karin Yusi, Victoria Greenbaum, and William Kearns.

- (4) That such territory contains more than five square miles 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 district, or town improvement district;
- (5) That the proposed territory of the village does not contain at least 500 regular inhabitants;
- (6) That the petition in any other specified respect does not conform to the requirements of Village Law Article 2.

In the instant matter, and based upon the above criteria, objectors argue that the Petition is legally insufficient for the following reasons, which fall within the proper scope of my review under the Village Law:<sup>2</sup>

- (1) the Petition is not signed by at least 20% of the residents in the proposed territory qualified to vote for town officers because of numerous disqualifying errors on the pages containing such signatures;
- (2) the signatures on the Petition were obtained based upon misinformation;
- (3) the Petition fails to include a complete list of “regular inhabitants” since there are both deceased individuals on the list, as well as those who no longer reside within the territory.

## DISCUSSION

### 1. Is the Petition Signed by at Least 20% of the Qualified Residents?

Village Law §2-202(1)(a)(1) requires that the Petitioners must constitute:

At least twenty per cent of the residents of such territory qualified to vote for town officers in a town in which all or part of such territory is located.

To determine whether the Petition satisfies this 20% test, I must first establish the total number of residents within the territory qualified to vote for town officers. Guided by the Court

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<sup>2</sup> Because they are clearly outside the statutory requirements, I have not considered the following comments and/or objections: (i) that part of Victoria Greenbaum’s May 13, 2019, submission stating that the Petition was circulated without formal notification to all residents of East Quogue and an informational meeting discussing the merits of incorporation, (ii) that part of the May 7, 2019 written submission of Jennifer A. Juengst, Esq., adopted by and incorporated into the May 13, 2019, written submission of Albert Algieri and William Kearns, stating that members of the Exploratory Committee have vested interests in Discovery Land Company and the Lewis Road PRD, (iii) the May 13, 2019, testimony of Ronald Campsey, (iv) the May 13, 2019, testimony of Vito Gentile, (v) the May 20, 2019, testimony of Dev Chitkara, and (vi) the May 29, 2019, written submission of Michael Mirino.

in Larkin v. Colello,<sup>3</sup> as well as previous incorporation decisions of this Town,<sup>4</sup> I did this by first referring to the list of “regular inhabitants” of such territory, which contains 3,428 names,<sup>5</sup> and then causing it to be compared to the Suffolk County Board of Elections list for election districts 9, 18, 27, 33, and 35.<sup>6</sup> A comparison of these two lists revealed that 2,974 of the “regular inhabitants” were “qualified” to vote for town officers as required by Village Law §2-202(1)(a)(1). Twenty percent of 2,974 is 595, the threshold Petitioners have to meet in order to satisfy this requirement.

Turning then to the objections, I find first that the objection of Steven J. Brash requires that his signature be invalidated. Mr. Brash, by written submission dated May 13, 2019, alleged that he did not sign the Petition, though his signature appears on Sheet No. 72, allegedly subscribed on July 14, 2018. Having gone unrefuted, and with no speculation on my part as to how his signature arrived on the Petition,<sup>7</sup> I will not count it as part of the 20% tally.

Next I will address the objections raised in the May 7, 2019 written submission of Jennifer A. Juengst, Esq., adopted by and incorporated into the May 13, 2019, written submission of Albert Algeri and William Kearns. That writing alleges that there are 58 signatures that are invalid based upon several different criteria, which I will attempt to address by category.

Of the 58 signatures,<sup>8</sup> objectors assert that approximately 17 are invalid because the individual does not appear on the voter registration list provided to them by the Suffolk County Board of Elections (the “BOE”) on April 12, 2019. I, however, have compared these names to a BOE list prepared at my request based upon the incorporation boundaries defined within the Petition, which I received from the BOE on May 10, 2019, and find that the following 12 names do in fact appear on said list: Martin Curran, Alan Fabrioatore, Jennifer Rutherford, Carol Forte, Sharon de Kote, Michael Wilmott, Kyle R. Scheurer, Jonathan S. McPherson, Joseph Cerbone, Dick Herzing, Jessica Insalaco, and Paul Insalaco. Based upon this comparison, I will not disregard these 12 names, and have reduced objectors’ overall number of challenged signatures from 58 to 46.

Objectors further contend that the six signatures of Alexander Samson, Taylor Samson, Kenneth J. Okorn, James E. Felsberg, and Allison W. Mager, all found on page 113 of the Petition, and that of Cody E. Hoyt, found on Page 201 of the Petition, are invalid because they do not include the individual’s hamlet or zip code. But a review of Village Law §2-202(1)(e)(3) clearly states, “following each signature there shall be set forth, not necessarily by the signer, the signer’s address

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<sup>3</sup> At 131 Misc. 2d 790, 792, 501 N.Y.S.2d 757, 758 (Rockland Cty Sup. Ct., 1986) (holding that only persons who are “regular inhabitants” of the area sought to be incorporated *and* who are *also* qualified voters are to be considered in establishing the 20% figure) (emphasis added).

<sup>4</sup> See In the Matter of the Petition to Incorporate the Proposed Village of Dunhampton, dated September 15, 2003.

<sup>5</sup> Said list is attached as Exhibit B to the Petition.

<sup>6</sup> The remaining election districts within the proposed territory, that is, 19, 25, 30, and 38, do not have improved parcels and thus, should not have residents residing therein qualified to vote for town officers.

<sup>7</sup> I recognize that, without any further evidence on this issue, there exists the possibility that Mr. Brash’s signature was placed on the Petition either by proponents in an effort to reach the 20% threshold, or by objectors, in an effort to taint the Petition process.

<sup>8</sup> There are actually 59 entries on this list provided as Exhibit A to the Algeri/Kearns submission; they claim that signature #5 on Page 87 is illegible and thus, presumably, reduce the total tally to 58. I recognize that signature to be Damon Hagan, residing at 28 Lewis Road, and thus, will not invalidate or disregard its inclusion.

consisting of street name and number, if any, and town.” Absent from this description is any requirement that the Petition contain the hamlet or particular geographic area within the town in which the signer resides.<sup>9</sup> For this reason, I will not disqualify these signatures, and will reduce objectors’ overall number of challenged signatures from 46 to 40.

Next, I have reviewed objectors’ claims that: (i) three names (Steven Spieger, De Sacks, and June Bielsky), should be disregarded because of “inadequate signatures,” (ii) Rose Moloney did not sign with her fully registered name, and (iii) Eric Rosante and Victoria J. Wright have “questionable addresses,” and find them each to be without merit. Indeed, as noted in Petitioners’ counsel’s response,<sup>10</sup> neither Village Law §2-202(e), nor analogous provisions of the Election Law – admittedly more stringent than the Village Law requirements herein – provide support for these challenges.<sup>11</sup> Thus, without legal authority supporting these objections, and cognizant of the fact that the objectors bear the burden of proof,<sup>12</sup> I will not disqualify these signatures, and will reduce objectors’ overall number of challenged signatures by 6, from 40 to 34.

Objectors next assert that the Notary Public, Cynthia McNamara, should be disqualified because she notarized her own signature, and is a member of the East Quogue Exploratory Committee. Village Law §2-202(1)(e)(4) requires, “[t]here shall be set forth at the bottom of each page of signatures an authenticating affidavit of a witness to the signing thereof which shall be in substantially the following form.” Thus, the subscribing witness, that is, the individual who witnessed the signatures on the Petition pages, needs to be sworn before a notary. In the instant case, the subscribing witness was Catherine Seeliger,<sup>13</sup> Ms. Seeliger, and not Ms. McNamara, gathered the signatures, and is attesting to the authentication of said signatures. Ms. McNamara is merely swearing in Ms. Seeliger, the subscribing witness. To that end, Ms. McNamara is not disqualified from acting as a notary on the Petition merely because she is a member of the East Quogue Exploratory Committee, and I find the cases provided, including Harte v. Faith Kaplan as Com’rs of Sullivan County Bd. of Elections,<sup>14</sup> persuasive.<sup>15</sup> Thus, I will not disqualify the signature of Cynthia McNamara, or that of Daniel McNamara, and will reduce objectors’ overall number of challenged signatures by 2, from 34 to 32.

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<sup>9</sup> Notably, Election Law §6-130 also does not require such information; see Gonzalez v. Lavine, 32 A.D.3d 483, 484, 820 N.Y.S.2d 616, 617 (2d Dept. 2006) (holding that the lower court improperly determined that five signatures were invalid because the signers either omitted or incorrectly listed the hamlet within the town in which they reside).

<sup>10</sup> See the May 20, 2019, written submission of Peter A. Bee, Esq., on behalf of Petitioners David Celi, Maria Daddino, and Karen Kooi, at page 2.

<sup>11</sup> See Election Law §6-134(5) (noting that the use of titles, initials, or customary abbreviations of given names by the signers shall not invalidate such signatures); see also Election Law §6-134(6) (declaring that an alteration or correction of information appearing on a signature line, other than the signature itself and the date, shall not invalidate such signature).

<sup>12</sup> See Village Law §2-206 (Proceeding on hearing), declaring at subsection 3, “[t]he burden of proof shall be on the objectors.”

<sup>13</sup> See Sheet No. 42 of the Petition.

<sup>14</sup> See Harte v. Faith Kaplan as Com’rs of Sullivan County Bd. of Elections, 87 A.D.3d 813, 814, 928 N.Y.S.2d 482 (3d Dept. 2011) (holding that there is no provision in Election Law §6-132, or otherwise, that prohibits a candidate from notarizing signatures on his or her own designating petition, and such practice has been deemed acceptable).

<sup>15</sup> I am not persuaded by the objectors’ inclusion of Pennsylvania case law; rather, its inclusion only works to affirm that there is no relevant New York legal authority supporting objectors’ position.

Finally, because they do not appear on the May 10, 2019, BOE list prepared at my request, or otherwise do not comply with the requirements of Village Law §2-202, I find that the following 32 signatures identified by objectors are invalid: Kimberly Danowski, Paul Turchiano, Dennis Nugent, Paul Candela, Lauren E. Volz, Ashley Decabia, Michael E. Majsce, Michael Jones, James Garity, Danielle Bragoli, Eric Woldenberg, Marlene Woldenberg, Roy Eskesen, Alicia Bellandi, Vincent G. Allegretta, Christy W. Zeitz, Charles D. Zeitz, Brendan P. Byrone, Amy Beth Byrone, Edgar Arguello, Jr., Kathleen Frangesnos, Barbara C. Alfred, Donna M. Camasi, Christopher Hudson, Tara L. Hudson, Kristin L. Jankowski, Stephen C. Scerri, Allyson Scerri, Helene Ely, Noel Feliciano, Keith Phillips, and Dana Hoyt.

Based upon the above analysis, I find that the removal of 33 signatures from the Petition (the 32 noted above and that of Mr. Brash), still leaves the Petitioners with 748 valid signatures, well beyond the requisite 20% required under Village Law, that is, 595. To that end, given the amount of signatures obtained by Petitioners (781), assuming, arguendo, that all 58 signatures were invalid as proposed by the objectors herein, the Petition would still satisfy the 20% threshold necessary under the statute to move forward, with 723 signatures of the necessary 595.

## 2. Were the Signatures on the Petition Obtained with Misinformation?

Several objections charged that individuals signed the Petition based upon misinformation, and/or based upon the premise that a person's signature was simply "opening a discussion" as it related to possible incorporation.<sup>16</sup> While I understand that this may be the case for at least one individual who signed, that is, Diane Dickson, I am guided by the statutory language of Village Law §2-206(3), which requires that the burden of proof shall be on the objectors. Based upon this standard, I do not believe that the objectors have met this burden.

Notably, the preamble at the top of each signatory page of the Petition clearly states that the petition is made and signed by residents "in the territory proposed to be incorporated by the petition." And while objectors disagree, the comment attributed to Brian Babcock in an online posting forum, to wit, that "a signature only allows the process to move to a vote," is not untrue. While it is likely that someone who signed the Petition is inclined to support incorporation, it does not foreclose the possibility that an individual who signed the Petition may later cast a vote against incorporation, assuming the matter reached the electorate. Thus, I cannot, as Ms. Greenbaum proposes, disregard 39 Petition sheets containing 156 signatures based upon a blanket conclusion that all 156 individuals were misinformed or confused as to why they were signing the Petition. Highlighting the difficulty with Ms. Greenbaum's argument is the hearing testimony of Joseph Sanicola, who stated:

"it was clearly delineated to me, when I signed the petition, by members of the committee of what I was signing. They clearly said that you're signing a petition to go into a – an election for the

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<sup>16</sup> See the (i) May 13 and May 31, 2019, written submission of Victoria Greenbaum, (ii) May 13 and May 17, 2019, written submission of Elizabeth Jackson, (iii) May 13, 2019, hearing testimony of Victoria Greenbaum at page 11, (iv) May 13, 2019, hearing testimony of Elizabeth Jackson at pages 23-24, (v) May 20, 2019, hearing testimony of Elizabeth Jackson at page 7, (vi) May 20, 2019 hearing testimony of Diane Dickson, at pages 12 -13, and (vii) May 20, 2019 hearing testimony of P.J. Mitchell at pages 14-15.

hamlet . . . in no way did I feel that there was any pressure to sign, nor did I feel that I was tricked into signing something that wasn't what I signed.

\* \* \* \*

A lot of the comments are coming that it was an inaccurate, or it wasn't clearly established what an individual was signing. I think [the committee] did a really wonderful job explaining, and actually beyond what I expected . . . ”<sup>17</sup>

As it relates specifically to Ms. Dickson's testimony, the law is clear that a Supervisor may not permit individuals to withdraw their signatures at or after the hearing.<sup>18</sup> Indeed, since the validity of the petition must be judged as of its filing, once the Town accepts the petition and acts on it by publishing notices of hearing, signatures may not be withdrawn.<sup>19</sup> Rather, the “remedy for any qualified voter who signed the petition ‘by mistake’ or who subsequently changed his or her mind, is to vote against incorporation,” should the matter ultimately be submitted to the electorate.<sup>20</sup> In any event, assuming Ms. Dickson's limited testimony invalidated her signature, petitioners would still be left with 747 valid signatures, well in excess of the 595 signatures required.

Thus, because the burden of proof rests with the objectors, their allegation that many other individuals “may”<sup>21</sup> have signed the Petition without fully understanding its meaning or consequence amounts only to conclusory statements, with no meaningful detail, and does not rise to the level of deeming the Petition legally insufficient on this ground.<sup>22</sup>

### 3. Does the Petition Include a Complete List of Regular Inhabitants?

Village Law §2-202(1)(b)(3) requires, first, that a petition for incorporation include an allegation that such territory contains a population of at least five hundred regular inhabitants. The statute then goes on to require, at §2-202(1)(c)(2), that said petition attach as an exhibit, a list of the names and addresses of the regular inhabitants of such territory to be incorporated. Here, petitioners attach a list of 3,428 regular inhabitants as Exhibit B to their petition (the “List”).<sup>23</sup>

Objector William Kearns claims in his submission of May 13, 2019, that approximately 36 individuals on said List have died, and approximately 58 have moved away.<sup>24</sup> By his May 31, 2019, submission however, Mr. Kearns revised that claim, asserting that 35 individuals on said

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<sup>17</sup> See May 13, 2019, hearing testimony of Joseph Sanicola, at pages 25-27.

<sup>18</sup> See Venne v. Sanford, 25 A.D.3d 1007, 808 N.Y.S.2d 480 (3d Dept. 2006).

<sup>19</sup> Id., 25 A.D.3d at 1009, 808 N.Y.S.2d at 482.

<sup>20</sup> Id.

<sup>21</sup> See May 13 and May 31, 2019, written submission of Victoria Greenbaum.

<sup>22</sup> See Larkin v. Colello, *supra* at note 3, 131 Misc.2d at 794, 501 N.Y.S.2d at 760 (finding that there was inadequate testimony/evidence presented at the hearing to justify the objector's unsupported conclusory allegation that “sufficient misinformation” was provided to prospective signatories “concerning the purpose of the petition, so as to cast sufficient doubt as to the validity of the entire petition to incorporate”).

<sup>23</sup> See the May 20, 2019, written submission of Peter A. Bee, Esq., on behalf of Petitioners David Celi, Maria Daddino, and Karen Kooi, at page 4.

<sup>24</sup> See the May 7, 2019, written submission of Jennifer A. Juengst, Esq., adopted by and incorporated into the May 13, 2019, written submission of Albert Algieri and William Kearns, at Exhibit I, pages 1-4.

List have died, and approximately 51 have moved away. Specifically, and presumably having learned otherwise, Mary A. Hamilton, of 21 Whiting Road, was removed from his tally of deceased persons, and the following individuals were removed from his tally of persons who have allegedly moved away: Amanda L. Britton, Jeffrey Dilandro, Kristin Hofer, Meghan E. Tria, Scott M. Tria, and Mary Velasquez.<sup>25</sup>

Importantly, Mr. Kearns does not attach any documentary evidence or supportive materials to his May 13<sup>th</sup> claim as it relates to the death or residence of the individuals he identified. He does include, as part of his May 31<sup>st</sup> submission, some documentary support by way of obituaries and printouts from the website “whitepages.com.” As stated throughout this Decision, and pursuant to Village Law §2-206(3), the burden of proof is on the objectors, and it is through this lens that I must review the information received.

Because no documentary proof was submitted with Mr. Kearns’ May 13<sup>th</sup> submission, I will not recognize those names provided as properly identifying errors in Petitioner’s List. With the burden of proof on objectors, the listing of said names, without more, amounts only to conclusory statements, and does not satisfy the statutory requirement.<sup>26</sup> That said, I do find the 34 obituaries provided as part of the May 31<sup>st</sup> submission credible evidence of an individual’s passing and thus, recognize that Petitioner’s List includes the names of 34 deceased persons.<sup>27</sup>

As it relates to the undated information provided from whitepages.com, I am not convinced that this is a reliable source which meets the objectors’ burden.<sup>28</sup> Indeed, indicative of this uncertainty, Mr. Kearns’ May 31<sup>st</sup> submission contains question marks next to each allegation suggesting that an individual has moved away, and the majority of the printouts provided (39), merely state that an individual purportedly “lives in” a city or state other than East Quogue, without providing any further identifying information, and without verifying, by way of a governmental database or affidavit, whether the addresses are valid. Based upon these shortcomings, I do not find that the objectors have met the necessary burden of proof to disqualify these names from the List.

New York courts, and in particular the Second Department,<sup>29</sup> have repeatedly interpreted Village Law §2-202(1)(c)(2) as requiring a “complete” and/or “accurate” list of the regular

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<sup>25</sup> The name Victor Velasquez was listed twice on the May 13<sup>th</sup> objection, but only once on the May 31<sup>st</sup> objection.

<sup>26</sup> Similarly, with no further documentary support or evidence provided, I will not consider the names of deceased persons and persons who “may” have moved away provided in the written submissions of Elizabeth Jackson dated May 13 and May 17, 2019. Indeed, providing no proof of these claims for my consideration, and emphasizing her lack of certainty, Ms. Jackson notes that one individual on her list, that is, Sabrina Salvi, is in fact still living in the proposed territory (Public Hearing Testimony of May 20, 2019, at page 7, lines 19-25).

<sup>27</sup> Because no obituary was provided for Lucile C. Carter, I will not recognize her as being deceased based upon Mr. Kearns’ May 31<sup>st</sup> allegation/written submission.

<sup>28</sup> While I recognize that the date 5/23/2019 appears at the top of each of these pages, I take this to mean the date the record was actually printed from objector’s computer, and not the date the record was made by whitepages.com.

<sup>29</sup> By way of background, to the extent it is needed, there are four Appellate Divisions of the Supreme Court, one in each of New York’s Judicial Departments. These Appellate Courts resolve appeals from judgments or orders of the superior courts of original jurisdiction in civil and criminal cases. Because Southampton Town is located within Suffolk County, the Second Appellate Department, referred to as the “Second Department,” has jurisdiction over our cases.



inhabitants of the territory sought to be incorporated.<sup>30</sup> Indeed, although the statutory language does not contain either of these words, the courts have continually found that a list of regular inhabitants that is not complete or accurate, is insufficient. Specific to these cases is the inclusion of those persons on a list that have died.<sup>31</sup>

In the instant case, there is no doubt that the Petition satisfies the requirement of §2-202(1)(b)(3), alleging that the proposed territory contains a population of at least five hundred regular inhabitants. The second requirement however, that is, that the Petition contain a complete list of the regular inhabitants, is problematic since objectors have identified 34 individuals on Petitioners' List who are now deceased.

Of the 3,428 names submitted on this List, I find that the inclusion of 34 in error is a nominal amount and, I believe, of no meaningful consequence since it is my opinion that the State Legislature, seemingly supportive of home rule, drafted these regulations only to require that a proposed territory meet the minimum population requirement of five hundred regular inhabitants. To that end, I appreciate the reasoning of the Third Department when, in examining this very issue, it recognized that "the compilation of [a] list can never be done with absolute precision since events, such as death and movement of persons in and out of the proposed area, are bound to occur during the petition circulation process," making such a list "impractical to obtain."<sup>32</sup> There, rather than requiring a list "free from any imperfection," the Third Department concluded that a list that is "substantially complete," and which demonstrates a "good faith effort on the part of the petitioners," complies with the statute.<sup>33</sup> I find myself like-minded with this Third Department analysis. Indeed, it is clear that Petitioners put forth a significant amount of work when compiling this Petition. Nevertheless, and despite my inclinations, I am constrained by the Second Department,<sup>34</sup> which requires "strict compliance" with the provisions of Village Law Article 2.<sup>35</sup> Based upon this controlling authority, I am compelled to find the Petition insufficient pursuant to Village Law §2-202(1)(c)(2), in that said List includes the names of those persons who have died,

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<sup>30</sup> See Bernstein v. Feiner, 165 A.D.3d 924, 926, 86 N.Y.S.3d 217, 218 (2d Dept. 2018) *lv. denied*, 32 N.Y.3d 915, 2019 WL 690111 (2019); see also Barnard v. St. Lawrence, 44 A.D.3d 1037, 1038, 844 N.Y.S.2d 436, 437 (2d Dept. 2007); Baker v. Heaney, 15 A.D.3d 577, 578, 791 N.Y.S.2d 573, 575 (2d Dept. 2005); Elevitch v. Colello, 168 A.D.2d 681, 682, 563 N.Y.S.2d 680 (2d Dept. 1990); Luria v. Conklin, 139 A.D.2d 650, 527 N.Y.S.2d 288, 289 (2d Dept. 1988); Matter of Incorporation of the Village of Viola Hills, 129 A.D.2d 579, 580, 514 N.Y.S.2d 79, 80 (2d Dept. 1987).

<sup>31</sup> A careful reading of Baker v. Heaney reveals that the Court found the petition legally insufficient because it failed to include an accurate list of the regular inhabitants under Village Law §2-202(1)(c)(2), and because it failed to substantiate the allegation that it contained a population of at least 500 regular inhabitants under Village Law §2-202(1)(b)(3).

<sup>32</sup> See Defreestville Area Neighborhood Association, Inc. v. Tazbir, 23 A.D.3d 70, 75, 800 N.Y.S.2d 474, 478 (3d Dept. 2005).

<sup>33</sup> Id.

<sup>34</sup> Most recently, in Bernstein v. Feiner, 58 Misc.3d 1221(A), 95 N.Y.S.3d 124, the Supreme Court, Westchester County, was overturned by the Second Department when, in examining a list of 4,827 regular inhabitants, it relied upon the Third Department's reasoning, asserting, "to require that a list of regular inhabitants be free from any imperfection would ensure that no village could ever be incorporated in the State of New York under Article 2 of the Village Law, as at any point in time, from one day to the next, new and previously unlisted inhabitants are born and/or move into the territory of a proposed village, and former previously listed inhabitants cease or otherwise move outside of such territorial boundaries."

<sup>35</sup> See Berkowitz v. St. Lawrence, 21 AD.3d 413, 414, 800 N.Y.S.2d 197, 198 (2d Dept. 2005); see also Baker v. Heaney, *supra*, 15 A.D.3d at 578, 791 N.Y.S.2d at 575.

and finding that Petitioners failed to demonstrate sufficient due diligence in their effort to remove said names by using available information such as obituaries to confirm an individual's passing.


### CONCLUSION

In summary, as to the three legally appropriate challenges raised by the Objectors, I find that:

1. The Petition is signed by at least 20% of the residents in the proposed territory qualified to vote for town officers;
2. The signatures on the Petition were not obtained based upon misinformation;
3. The Petition fails to include a complete list of "regular inhabitants" since there are a number of deceased individuals on the List.

Therefore, based upon my finding in #3 above, I have determined that the Petition to incorporate the Village of East Quogue is legally insufficient within the meaning of Article 2 of the Village Law.

Dated: Southampton, New York  
June 10, 2019



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JAY SCHNEIDERMAN  
TOWN SUPERVISOR