

September 28, 2018

Hon. Daniel J. Doyle, J.S.C.
Monroe County Supreme Court
545 Hall of Justice
Rochester, New York 14614

Re: *Seneca Meadows, Inc. v. Town of Seneca Falls*
Seneca County Supreme Court Index No. 51652

Dear Judge Doyle:

This office represents Dixie C. Lemmon and Concerned Citizens of Seneca County, Inc. (“Intervenors”) in connection with the above-referenced case. We are in receipt of yesterday’s correspondence to Your Honor from counsel for the petitioner/plaintiff, and respectfully wish to respond accordingly.

Intervenors served their motion to intervene on September 13, 2018, 20 days prior to the October 3, 2018 return date¹, and said motion was served by overnight courier to give the petitioner/plaintiff and respondents/defendants maximum time to respond and to avoid any further adjournments. Notwithstanding, as they know that first adjournments are typically granted as a matter of course, Intervenors are not opposed to a brief adjournment of the motion to intervene if the Court is inclined to grant one.

Intervenors object to any briefing schedule that would establish the return date for the Article 78 portion of the matter an additional 120 days from the entry of an order deciding Intervenors’ motion to intervene². If Intervenors’ motion is heard in late October, the Court might not issue a decision until December, which would push the return date to at least April of 2019. CPLR Section 7804(c) requires service of a notice of petition and petition only 20 days prior to the return date, and this matter was commenced way back in 2017 without any responsive pleading respondents/defendants. Intervenors are prepared to file their proposed answer forthwith if their motion to intervene is granted, and they fail to grasp why

¹ Since Intervenors’ motion was served more than 16 days prior to the October 3, 2018 return date, responses were due to be served at least 7 days before the return date, i.e., by September 26, 2018.

² Intervenors were willing to consent to establishing the return date on the Article 78 portion of the matter 60 days after the entry of an order on Intervenors’ motion, which is 40 days more than required by CPLR Section 7804(c).

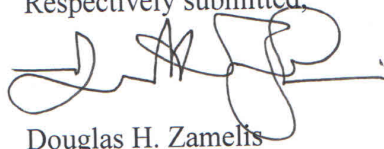
petitioner/plaintiff would need an additional 45 days to serve a memorandum of law in support of its petition/complaint when it chose not to file a memorandum of law when it filed its petition/complaint, and could still file a memorandum of law with its reply.

Additionally, Intervenors submit that the procedures for the Article 78 portion of the matter differ from those for the declaratory judgment action and that the declaratory judgment portion of the matter cannot be decided summarily in the absence of a dispositive motion.

Despite good faith efforts among the parties, Intervenors were therefore unable to consent to a proposed briefing schedule which would unnecessarily and unreasonably exacerbate the already extended delay, and introduce uncertainty concerning the schedule for plaintiff's declaratory judgment action.

Thank you very much for the Court's consideration.

Respectively submitted,

A handwritten signature in black ink, appearing to read 'Douglas H. Zamelis', written over a horizontal line.

Douglas H. Zamelis

cc:

Scott M. Turner, Esq
David K. Hou, Esq.