The Bumps, Bruises & Pitfalls of Village Dissolution

With the emergence of several NYS programs incentivizing consolidation, here's a run-down of some of the frequent hang-ups villages and towns may encounter

By Nicole T. Allen, AICP, Planning Services Manager; Benjamin H. Syden, AICP, Vice President; and Richard F. Laberge, PE, President, Laberge Group

A village dissolution typically begins one of two ways: the village board passes a resolution to initiate the dissolution process, or the registered voters submit a petition calling for a dissolution of the community.

In 2010, New York State amended the General Municipal Law in order to make it easier for communities to dissolve a government. Since the GML 17-A became effective, 17 villages have voted to dissolve, eight since 2015. While the process to call for dissolution has become easier overall, communities should be wary of the many bumps, bruises and pitfalls of village dissolution for both towns and villages. This article focuses on the "voter-initiated" process of dissolving a village because a "board-initiated" process can avoid many of these bumps and bruises. (Note: this same process also applies to towns and to special districts).

Having worked with the villages of Salem, Macedon, Port Henry and now Mastic Beach, Laberge Group has identified several challenges and categorized them into stages: *Pre-Referendum, the Creation of the Dissolution Plan* and *the Transition/Implementation of the Plan.*

The Pre-Referendum Stage

Bruise: Easier to initiate dissolution

As detailed by the New York State Department of State, the recent passage of the *New N.Y. Government Reorganization and Citizen Empowerment Act* provides a new process for citizens to petition for a public vote on dissolving or consolidating local governments. In summary, "a petition needs to be signed by at least 10 percent of the number of electors in that entity or 5,000 signatures, whichever is less, in each town, village or special district to be consolidated or dissolved. However, if the village has 500 or fewer registered voters, than the signatures of at least 20 percent of the voters from that local government unit are required."

Many communities will find the 10 percent threshold of voter signatures an easy benchmark to meet. However, this milestone also marks the beginning of the "great divide" of a community, and residents often begin choosing sides with very little information at this point.

Bruise: A very tight timeline

Once the petition is submitted, the process, along with a mandatory timeline associated with dissolution, begins. The petition must be verified within 10 days, and then the village has 30 days to call a meeting to set the date of the referendum to vote on dissolution. The vote has to be no less than 60 days and no more than 90 days from the meeting. Such a stringent timeline does not lend itself to a thorough review of the facts prior to a vote. Some communities are

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caught off guard while some are in denial that dissolution is a real possibility; others want to answer their constituents' questions but just do not know where to begin.

Pitfall: No requirement for a study of dissolution or options

The New York State process does not require a village to develop any information, to study dissolution or develop potential options during the *pre-referendum* period. The New York State Department of State (NYSDOS) Local Government Efficiency Program provides expedited financial assistance through a Citizen Reorganization Empowerment Grant (CREG), which can be used to host informational meetings and to prepare a study to outline the facts, figures and consequences of dissolution. Often, these interim studies involve a quick review of:

- municipal services
- budgets
- assets, debts and obligations
- staffing
- fiscal impacts of dissolution.

This review is meant to create a snapshot of how dissolution will affect the communities. It is critically important to the process, for without an adequate interim study, village residents are incredibly susceptible to an emotional vote, and not necessarily with a well-informed opinion. [1]

Bump: The perception that debt goes away

Residents who push or vote for dissolution often believe that their current debt and liabilities will be spread out over the entire town upon dissolution. Unfortunately, their debt travels with. In fact, debt may go at the same interest rate regardless of whether the new government has a better bond rating. During the

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dissolution process, each loan and indebtedness obligation should be reviewed to see if it can be restructured. However, upon dissolution, the former village will continue to pay any and all outstanding debts until they are gone.

The Creation of the Dissolution Plan Stage

Once the referendum is conducted and the electorate has decided to dissolve the village, the community will embark on the development of a *Dissolution Plan* in accordance with the provisions of General Municipal Law 17-A.

Bump: Tight timeline continues and data-gathering snags

Following the confirmed results of the vote, the village board is required to meet within 30 days to acknowledge the results and establish the start of the dissolution process. The dissolution plan must be approved **within 180 days** of this village board meeting. Even with 180 days to approve the plan, it can be a very difficult process if any of the following apply to the community: public safety services, municipal water and sewer, village's location in multiple towns/counties, etc. In addition, the short timeline does not allow for assessments of village infrastructure, capital improvement planning, municipal audits or property assessments.

One of the challenges involved with the development of a dissolution plan is gathering the data and making the data "work." It is extremely difficult to reconcile budgets when the fiscal years of a village and a town do not match -- data is not always captured in the same way; property assessments may not be at the same equalization rate; property-specific records may not be kept; data may not be reported to New York State in the same fashion or time frame; and municipal records may not be up to date.

Bruise: No requirement for the town to participate in the dissolution process

A recurring theme through all dissolution stages is that the town is not required to participate in the process. The town, which would be responsible for the former village upon dissolution, has no obligatory requirements to participate, and town residents have no say (or vote) as to whether the dissolution occurs. Without a town's participation, a village may be forced to make assumptions regarding its employees and whether their employment will continue or be needed by the town; future services and special districts the town will provide; future costs associated with those services; and whether specialty equipment or assets the village has is needed by the town.

Pitfall: No requirement for town to adopt the dissolution plan

This is a huge obstacle – almost monumental, as it can breed mistrust in the conclusions drawn from any information prior to the referendum as well as the dissolution plan, often leading village residents to rally against the dissolution plan. Without town representation, residents feel as though the "plan does not matter without town approval or buy-in" as it does not need to be implemented as written by the town, nor does it need to be approved by the town prior to its adoption by the village. This feeling of mistrust makes village residents question whether what they are voting on will indeed be a reflection of their future governance. While dissolution often results in a tax savings for village residents, many village residents question whether their services will meet the same standards to which they are currently accustomed or if services will be reduced because of this lack of required commitment by the town.

Pitfall: How does a village stop dissolution?

While the law requires 10 percent to start the dissolution process, it requires at **least 25**

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percent of voters to stop the dissolution. It is very difficult to muster the campaign to get 25 percent of the registered voters to sign a petition to call for a second vote within 45 days of the adoption of a dissolution plan. Should the petition be successful, a new timeline is set forth that begins with 10 days to verify and certify the petition, 30 days to call a meeting to set the referendum date, and hold a referendum no less than 60 days but no more than 90 days away. This new timeline often puts a severe crimp on the timeline set for dissolution, and if not planned for, will cause many challenges for the transition of the community leadership and services.

But does dissolution stop? Currently, there is no case law that resolves what happens after this second referendum. The law reads, "If such a majority vote does not result, the referendum shall fail, and dissolution shall not take effect." Some argue that dissolution has already been voted on, and therefore the plan just needs to be revised until satisfactorily accepted by the voters. Others believe that dissolution fails. To complicate it further, if the first referendum failed, dissolution would not be allowed to commence for another four years. However, the law does not speak to the timeline associated with the second referendum. If a revised law is not introduced to address this question, it is only a matter of time before it becomes a legal decision of the courts.

The Implementation of the Dissolution Plan Stage

In 2010, when New York State amended the General Municipal Law, it also provided the Citizen Empowerment Tax Credit. This tax credit incentivizes dissolution/consolidation with an annual tax credit to aid local governments, equal to 15 percent of the combined amount of real property taxes levied by all of the municipalities involved in the consolidation or dissolution, not to exceed $1 million. This is an annual tax credit

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provided for perpetuity (as the law is currently written). At least 70 percent of this tax credit must be used for property tax relief.

Bump: Timeline implementing dissolution

The effective date of dissolution can vary from another "bump" or a major pitfall in the process. The dissolution plan identifies the date that dissolution will occur. The law states that dissolution may not occur less than 45 days from the adoption of the dissolution plan to allow time for signatures to be submitted for the second referendum. But to shutter a village, adequate time is needed to properly close down the affairs of government. In fact, any timeline of less than one year can cause significant stress on both the village and the town. While the town's participation wasn't required before, it now has to take the lead and begin implementation. The two communities need to be able to work together. The town will need time to: adopt a budget that accounts for the former village and incoming employees, create special districts, reassign contracts and loans, transfer deeds and titles, etc. While most communities would say there is no good time to dissolve, there definitely needs to be adequate time and forethought in the dissolution date.

Bruise: Creation of special districts

While the intent is to remove duplicative layers of government and reduce taxing districts, village dissolution often results in the establishment of additional special districts by the town. These districts are formed to provide services that the former village may have had, but are not provided town-wide, such as but not limited to: water, sewer, lighting, sidewalks, fire and park districts. One of the pitfalls of dissolution is that it requires the creation of these special districts to be subject to a permissive referendum. However, most of these special districts are for services and debt already incurred in the former village (water and sewer, for example). The law does not exempt these special districts from a possible permissive referendum, creating a possibility that the electorate may choose to vote down a district that already "existed" prior to dissolution.

Pitfall: Continuity of governance

Regardless of the process, there will be raw emotion and a divided community (perhaps literally and figuratively) as a result of dissolution. As with every transition in leadership, the continuity of governance is a sacred part of our democracy. However, in village dissolution, it is even more challenging. Often the employees that are not being transferred are forced to look for work elsewhere, and their jobs are not filled. Employee morale may be at an all-time low, and services still need to be provided. In many cases, the outgoing village administration may wish to enter into an intermunicipal agreement to provide necessary services, but may lack the budget to pay for it. It takes strong leadership of both the village and the town to navigate these potential pitfalls in order to emerge as a stronger community.

These are hard times for all municipalities in New York State. With residents and community leaders looking for every opportunity to realize both greater efficiencies and lower costs in service provision, the conversation often turns toward dissolution as a quick remedy. However, it is prudent to embark on the journey of discovery with your eyes open, and make decisions based on information rather than emotion. It may be better to take a step back as a community and begin the process with information and a plan, for once a petition is submitted and validated, the process becomes more a sprint through rings of fire across obstacles and pitfalls rather than a meandering

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marathon with twists and turns along the route. In both cases there is a finish line, and everyone is exasperated, but if you planned well, are trained for all scenarios, your new community may come out a winner. ❐

(Endnotes)

1 NYS Department of State does provide funding and technical assistance for the development of the interim Report through the *Citizen's Reorganization and*

Laberge Group has been providing engineering, architecture, planning and surveying services since 1964. We have assisted several villages/towns in navigating this complicated, emotional, and significant process of dissolution. More information on not only the bumps, bruises, and pitfalls – but also insights into how to ameliorate the process – will be shared during our presentation at the AOT Conference on February 20, 2017.