

Town of Alexandria

Agenda for Town Board Meeting

05-17-2023 at 6 pm

Streamed Live at - alexandria.statdvr.com

- * Call the town board meeting to order
- * Please stand For Pledge of Allegiance
- * Motion to approve and pay abstract bills
- * Motion to approve town board meeting minutes: 4/26, 5/03, 5/10

Public Concerns:

- 1.) Supreme Court of the State of New York, Appellate Division 4th Judicial District Dept: Daniel Peterson vs Town of Alexandria, Decision rendered and published 05-05-2023
- 2.) Resolution to charge legal and accounting defense fees – see NYS Comptrollers Opinion
- 3.) Hearts for Youth
- 4.) Fire alarm system at two highway buildings
- 5.) Brush pit regulations
- 6.) Water leak Redwood water
- 7.) Highway report
- 8.) Bolton Ave rec center status
- 9.) Presentation to board of April 2023 operating statement and balance sheet, posted on town website for the public
- 10.) Budget transfers
- 11.) Redwood welcome signs status
- 12.) Goose Bay ramp and parking lot project status
- 13.) Water report
- 14.) Sewer repor
- 15.) DPW report
- 16.) Water sewer committee report
- 17.) Arena/youth report
- 18.)
- 19.)
- 20.) Motion to go into executive session to discuss litigation

SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department

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CA 21-01495

PRESENT: WHALEN, P.J., SMITH, CURRAN, MONTOUR, AND OGDEN, JJ.

IN THE MATTER OF **DANIEL B. PETERSON**,
PETITIONER-APPELLANT,

MEMORANDUM AND ORDER

TOWN OF ALEXANDRIA, RESPONDENT-RESPONDENT.

BOUSQUET HOLSTEIN PLLC, SYRACUSE (GREGORY D. ERIKSEN OF COUNSEL), FOR
PETITIONER-APPELLANT.

SLYE LAW OFFICES, P.C., WATERTOWN (ROBERT J. SLYE OF COUNSEL), FOR RESPONDENT-
RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court, Jefferson County (James P. McClusky, J.), entered September 28, 2021. The judgment, *inter alia*, dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this special proceeding seeking, with respect to the only remaining cause of action in the petition, a summary investigation pursuant to General Municipal Law S 4 into certain financial affairs of respondent Town of Alexandria (Town). In support thereof, petitioner presented to Supreme Court the requisite affidavits of property owners who paid taxes on real property within the Town in the past year, alleging that moneys of the Town consisting of sewer and water funds were being unlawfully or corruptly expended. Following proceedings on the petition, the court, upon consideration of the pleadings and submissions, dismissed the petition on the ground that the allegations had not been substantially proved and also denied petitioner's motion brought by order to show cause seeking injunctive and other relief. Petitioner appeals, and we now affirm.

General Municipal Law S 4, which is the same as its predecessor statute (see General Municipal Law former S 3; Matter of Taxpayers of Plattsburgh, 157 NY 78, 81-82 [1898] ; Matter of Village of Victory, 111 AD3d 987, 988 [3d Dept 2013]), provides that, upon presentation of the requisite affidavits followed by required notice to the applicable officers of the subject town or village, the court "shall make a summary investigation into the financial affairs of such town or village, and the accounts of such officers, and, in [its] discretion, may appoint experts to make such investigation, and may cause the result thereof to be published in such manner as [it] may deem proper.

The statute further provides that [t]he costs incurred in such investigation shall be taxed by the [court], and paid, upon [its] order, by the officers whose expenditures are investigated, if the facts in such

affidavit be substantially proved, and otherwise, by the [property owners] making such affidavit . If [the court] shall be satisfied that any of the moneys of such town or village are being unlawfully or corruptly expended or are being appropriated for purposes to which they are not properly applicable, or are improvidently squandered or wasted, Cit] shall forthwith grant an order restraining such unlawful or corrupt expenditure, or such other improper use of such moneys' (General Municipal Law S 4).

Petitioner contends that, after appointing an expert accounting firm to perform the investigation and receiving its report, the court erred in permitting the Town to retain its own expert accountant and in considering the report prepared by that accountant. We reject that contention. The statute commits the appointment of experts to the discretion of the court (see General Municipal Law S 4), and the court was entitled in this special proceeding to require the submission of additional proof (see CPLR 409 [a]; see generally Village of Victory, 111 AD3d at 988-989). We cannot conclude on this record that the court abused its discretion either in permitting the Town to retain its own expert accountant or in considering the report prepared by that accountant, particularly in view of petitioner' s involvement in the selection of the court-appointed expert accounting firm, which included interviewing that firm and several others, specifically recommending and requesting that the court appoint the subject expert accounting firm, and signing the corresponding engagement agreement, as well as the fact that petitioner worked with the accounting firm by providing it with documentation (see generally Taxpayers of Plattsburgh, 157 NY at 88; Matter of Town of Eastchester, 6 NYS 120, 121 [Sup Ct, Gen Term, 2d Dept 18891]).

Contrary to petitioner' s related contention, we conclude that the court, in evaluating whether the allegations were substantially proved, was not required to simply accept the findings in the report of the expert accounting firm. That report "was not conclusive, but was merely for the information of the conscience of the court" (Taxpayers of Plattsburgh, 157 NY at 88). Upon our review of the record, we further conclude that the court did not abuse its discretion in determining that the allegations had not been substantially " proved" (General Municipal Law S 4; see Taxpayers of Plattsburgh, 157 NY at 84-87), and the court thus properly dismissed the petition. Inasmuch as

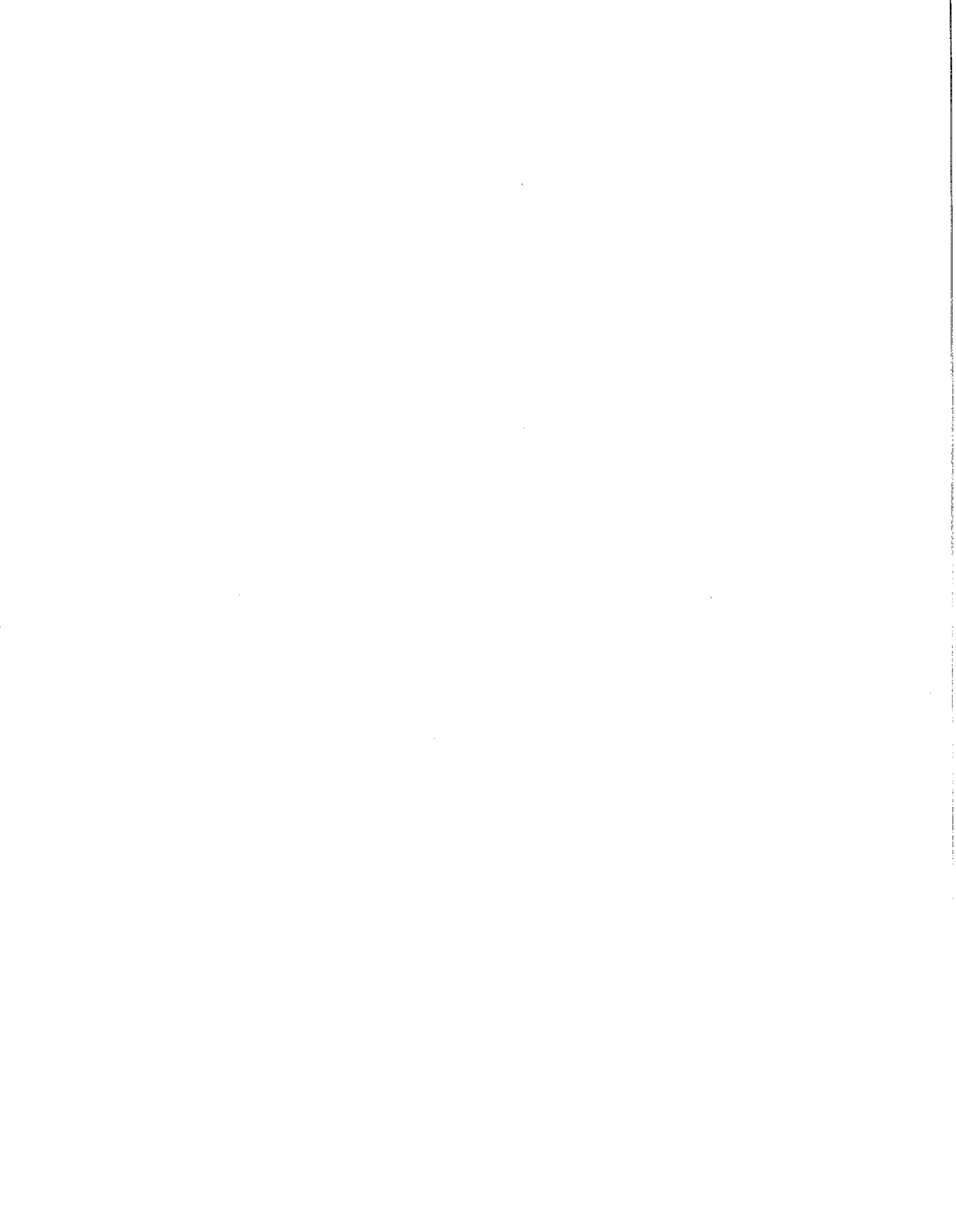
injunctive relief is simply not available when the [petitioner] does not have any remaining substantive cause of action, ' dismissal of the remaining substantive cause of action in the petition mandated denial of petitioner' s motion seeking injunctive relief (Energy Mark, LLC v New Wave Energy Corp. , 186 AD3d 1022, 1024 C 4th Dept 2020] ; see Pickard v Campbell, 207 AD3d 1 1 05 , 1110 c 4th Dept 2022] , IV denied 39 NY3d 910 [2023]) .

We have considered petitioner' s remaining contentions, and we conclude that they do not require modification or reversal of the judgement.

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CA 21-01495; Entered May 5, 2023,

Ann Dillon Flynn
Clerk of the Court



Opinion from NYS Comptroller

Opns St Comp, 1986 No. 86-43

New York State Comptroller

July 17, 1986

TO: DONALD R. BECKER, ESQ., TOWN ATTORNEY

TOWN OF NEWBURGH

Town Law, §§ 65, 68, 202, 202-a

**1. MUNICIPAL FUNDS—IMPROVEMENT
DISTRICT—CHARGES LEGAL FEES AND
COSTS OF SETTLEMENT OF ACTIONS
AGAINST TOWN BOARD**

**2. WATER DISTRICTS—CHARGEBACK—TO
LEGAL FEES AND COSTS OF SETTLEMENT
OF ACTIONS AGAINST TOWN**

The cost of the settlement of an action or proceeding against a town arising out of the operation of a special improvement district, as well as related legal fees incurred, is properly charged back to the particular district involved as an “expense of maintenance**” of the special improvement district within the meaning of Town Law, §202-a.**

We have received an inquiry concerning the payment of settlement costs and legal fees in actions against the Town of Newburgh arising out of the operation of three of the Town's sewage treatment plants and its water filter plant. You state that

there are seven sewer districts located within the Town, each with its own sewage treatment plant, and that there is one consolidated water plant within the Town, which is served by the filter plant. You advise that settlement of the actions is imminent and ask whether the Town may pay the anticipated settlement costs from the Town's general fund, or whether each special district must be required to pay all of the fines and legal fees attributable to its particular treatment plant.

A special improvement district governed by the town board is an administrative department in the town, and the town board is responsible for the planning, construction and management of improvements in such district (Town Law, § 198). A special improvement district is not an independent legal entity, municipal corporation or district corporation (General Construction

Law, § 66(2), (3); *Belinson v Sewer Dist. No. 16 of Town of Amherst*, 65 AD2d 912, 410 NYS2d 469; *Tom Sawyer Motor*

Inns v County of Chemung, 33 AD2d 720, 305 NYS2d 408, affd 32 NY2d 775, 334 NYS2d 958). Thus, actions and proceedings involving a district must be brought against the town in which the district is located (*Anderson v Port Washington Public Parking Dist.*, 1 AD2d 826, 148 NYS2d 489; *Grishaber v Town of Callicoon*, 263 App Div 471, 33 NYS2d 508).

However, the fact that the town board is responsible for the establishment and maintenance of improvements in a special improvement district does not mean that the town is responsible for the costs of the improvements or their operation.

Pursuant to Town Law, § 202, the expense of the establishment of a sewer or water district is required to be assessed against the parcels within the district in the manner prescribed by that statute (Town Law, § 202[2], [3]). Furthermore, Town Law, § 202-a provides that after the improvement is constructed, the expense of maintenance shall be assessed and levied against the

lots or parcels of land in the district in the same manner as the expense of the cost of the improvement was charged. Thus, in an action to recover damages for personal injuries sustained as the result of the alleged negligent construction and maintenance of a sidewalk in a public parking field, the Appellate Division, Second Department, stated as follows: "...it is our opinion that the public parking district is not a legal entity which may be sued, but that the members of the town board are liable for negligence because on them is the duty of construction and maintenance imposed by statute. Town Law, § 198, subd 5, 202-a. *** However, the members of the town board may levy and assess the cost of any judgment obtained against them upon property within the district in a sum sufficient to reimburse themselves.

Donald R. Becker, Esq., Town Attorney Town of Newburgh, Opns St Comp, 1986 No....

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Grishaber v Town of Callicoon, 263 App Div 471, 33 NYS2d 508". (*Anderson v Port Washington Public Parking*

Dist., 1 AD2d 826, 148 NYS2d 489, 491, *supra*).

In addition, this Office has expressed the opinion that the cost of liability and casualty insurance and the cost of

self-insurance obtained through the town are expenses of maintenance of an improvement district within the meaning of

Town Law, § 202-a and, therefore, that such costs, apportioned on some equitable basis, are properly charged against a special improvement district (1979 Opns St Comp No. 79-621, p 119). Therefore, in the instant situation, it is our opinion that the cost of the settlement of actions and proceedings against a town arising out of the operation of a special improvement district, as well as the related legal fees incurred, constitute an "expense of maintenance" within the meaning of Town Law, § 202-a and are properly chargeable against the respective districts involved.

Opns St Comp, 1986 No. 86-43 (N.Y.St.Cptr.), 1986 WL 31731

