

# DI STASI MORIELLO & MURPHY LAW PLLC

ATTORNEYS AT LAW

LEWIS C. DISTASI, JR.  
JOSEPH M. MORIELLO  
SEAN MURPHY

JENNIFER S. CHANG

400 UPPER NORTH ROAD · ROUTE 9-W  
P.O. BOX 915  
HIGHLAND, NEW YORK 12528  
(845) 691-7292  
FAX NO. ONLY: (845) 691-2710  
e-mail dmmlaw@bestweb.net

June 18, 2015

Town Board, Town of New Paltz  
52 Clearwater Road  
New Paltz, NY 12561

Dear Members of the Board:

The following opinion is in response to the questions in a June 4, 2015 letter from several Plains Road residents to attorney Joe Moriello and the Town Board. Each question is restated below in *italics*, followed by our response. We invite you to contact us for any additional clarification of information.

**[Q:]** *1. If/when the Town Board passes a resolution to establish a new Plains Road Community water district (District 5), as anticipated, we know that it is subject to a permissive referendum. Exactly how many signatures - and from whom - are required on a **petition** to trigger a referendum?*

**[A:]** This question refers specifically to the establishment or extension of improvement districts pursuant to Town Law Article 12-A, Section 209-e, which is termed the alternate procedure to Town Law Article 12 (establishment on petition) and subject to a permissive referendum. According to such Article 12-A, Section 209-e, once the Town Board adopts a resolution approving the establishment or extension of a new district, the town clerk shall post notice within ten days, and a petition requesting a referendum may be filed with the Town clerk within thirty (30) days of adoption, which petition "shall be sufficient if signed, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner prescribed by the election law for the authentication of nominating petitions, by the owners of taxable real property situate in the proposed district or proposed extended district, as shown upon the latest completed assessment-roll of said town, in number equal to at least five per cent of the total number of such owners, or by one hundred of such owners, whichever is the lesser."

The latest completed assessment-roll will show the number owners in the proposed water district. Valid signatures equal to five percent (5%) of said owners would be required in order to file a petition requesting a referendum. Pursuant to Town Law Article 7, the proposition would then be put to a vote in a special town election within sixty (60) to seventy-five (75) days, or at a general town election if one should fall within this time frame. Pursuant to the specific provisions of Section 209-e(3), only the owners of taxable real property situate in the proposed district are eligible to vote (or sign the petition), and in order to take

effect, the proposition must be approved by “the affirmative vote of a majority of the owners of taxable real property situate in the proposed district or proposed extended district as shown upon the latest completed assessment-roll of the town, voting on such proposition.”

The signatures on a petition for referendum must be adequately acknowledged, proved or authenticated, and each sheet of the petition must set forth in every instance the name of the signer, his or her residence address, town, and the date when the signature is affixed. Objections to a petition may be filed with the town clerk by verified petition setting forth objections within five days of the filing of the petition, and subject to review by a court of competent jurisdiction within twenty (20) days.

**[Q:]** 2. *Article 12A of NYS Town Law says that the Town Clerk shall prepare and have available proper forms for the above-referenced petition. Can you please provide same ASAP? (specifically: when?)*

**[A:]** A sample petition form calling for a referendum on a resolution for the establishment of a special water district is attached.

**[Q:]** 3. *Is the assessment roll currently posted on the Town of New Paltz website the latest completed for purposes of this petition & referendum process? If not, may we procure the latest ASAP? (specifically: when?)*

**[A:]** The current assessment roll can be accessed on the Ulster County government website:  
<http://ulstercountyny.gov/real-property/assessment-rolls> (confirmed as current by Town Assessor 6/16/15)

**[Q:]** 4. *For purposes of calculating the total number of owners of taxable real property in the proposed district: (a) If there is more than one owner of a given property (e.g., a couple, or an individual & an adult child), are both entitled to sign the petition, and are both entitled to vote in a permissive referendum regarding a proposed water district? What about other household residents of legal age?*

**[A 4(a):]** According to the NY State Comptroller (Opinion No. 86-17), for the purposes of signing a petition for or voting in a permissive referendum under Section 209-e, “[e]ach tenant by the entirety, tenant in common and joint tenant owning taxable real property within a proposed district or extension are entitled to vote in a referendum. However, partnerships and corporations owning such property are only entitled to a single vote.” We understand this to mean that ownership according to the latest assessment-roll is what qualifies a person to sign a petition and vote in a referendum regarding the establishment of a water district. Voter registration and/or eligibility to vote in a town general election does not appear to be a requirement (however, the petition must conform to the authentication requirements of the Election law). Other household residents of legal voting age, including tenants and family members would not be permitted to sign the petition or vote in the referendum, unless they are owners of record according to the latest assessment-roll.

It is also worth mentioning that absentee voting is **not** permitted unless the proposition is presented for voting at a general town election. (See N.Y. Attorney General Opinion 83-6, Feb. 4, 1983)

*(b) If an individual owns more than one separate & discrete property (as listed in the assessment roll), is that individual entitled to a vote for each taxable property, or only to one vote in total, despite paying taxes on multiple properties?*

**[A 4(b):]** According to the above-referenced Comptroller's Opinion (86-17), an owner of real property within a proposed district or extension is only entitled to a single vote under Section 209-e even if he owns multiple parcels (*cf. Salyer Land Co. V. Tulare Water District*, 410 US 719, 93 S Ct 1224, 35 L Ed 2d 659)."

*(c) If a property is in trust, who is entitled to sign and/or vote (per the above) - the person from whom the trust is held, or the trustee, or both?*

**[A 4(c):]** In a situation where land is held in trust, the trust is the owner of record and while beneficiaries may enforce the trust, they do not take any legal estate in the property (EPTL 7-2.1 [a]). Therefore, only a trustee authorized to act on behalf of the trust would be entitled to sign and/or vote on a Section 209-e petition and referendum. In the event there is more than one trustee, (and based upon the same reasoning that limits partnerships and corporations to only one vote) we conclude that a trust with multiple trustees would be allowed only one vote and/or signature per owner-trust.

**[Q:]** 5. *Is a "majority" of owners defined as greater than 50%, or some other definition, in calculating referendum results?*

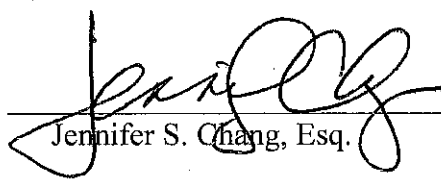
**[A:]** Section 209-e(3) provides for approval by the "affirmative vote of a majority of owners of taxable real property situate in the proposed district or proposed extended district, as shown upon the latest completed assessment-roll of the town, voting on such proposition." There being no other indication of any other criteria (e.g., assessed value of the property, etc.) our understanding is that a "majority" means greater than 50% of the number of votes cast by owners of taxable real property situate in the proposed district or proposed extension.

We trust that this opinion will be of assistance. Please contact this office for any additional information

Thank you,,

DI STASI, MORIELLO & MURPHY LAW, PLLC

By: \_\_\_\_\_

  
Jennifer S. Chang, Esq.

**[Sample] Referendum Petition**

Pursuant to Town Law Article 7 & Article 12-A Section 209-e

*(applicable to establishment of special district)*

To: Town Clerk, Town of New Paltz:

1. We, the undersigned owners of taxable real property situate in the area proposed by Town of New Paltz Town Board Resolution No. \_\_\_\_\_ for the establishment of a water district [or extension], and enacted by the Town Board of the Town of New Paltz on \_\_\_\_\_, 2015, constituting not less than five per cent of the total number owners of taxable real property situate in the proposed district, respectfully request that Resolution No. \_\_\_\_\_ entitled \_\_\_\_\_, be submitted to all the owners of taxable real property situate in the proposed district for their approval or rejection at a special election [or] the next general election to be held on \_\_\_\_\_, 2015 [or] within sixty to seventy-five days next, following the filing of this petition.
2. The ballot title of the proposed measure shall be "Referendum of \_\_\_\_\_," and shall provide [supply brief description of referendum measure].
3. \_\_\_\_\_, chairman, \_\_\_\_\_, and \_\_\_\_\_ shall constitute a committee for the petitioners herein and shall represent and act for the petitioners in the circulation and filing of this petition.
4. Each petitioner, for him or herself, says: *I have personally signed this petition; I have not signed any other petition for the same measures; I am an owner of taxable real property situate in the proposed district [or extension], as shown upon the latest completed assessment-roll of the Town of New Paltz; and my place of residence, including street number, if such exist, is correctly written after my name.*

<u>Name</u>	<u>Address</u>	<u>Precinct No./ Or City/Town</u>	<u>Date</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

[authentication statement of person(s) witnessing signatures must be attached to each sheet. ]

*Sample authentication language/Statement of Witness*

I, \_\_\_\_\_, state: I am a duly qualified voter of the State of New York, Town of New Paltz, and am qualified to sign this petition. I now reside at \_\_\_\_\_, \_\_\_\_\_ (city/town). Each of the individuals whose names are subscribed to this petition sheet containing \_\_\_\_\_ (#) signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn. \_\_\_\_\_ (signature)  
\_\_\_\_\_ (date)