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Municipal Corporations—Annexation of Territory

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THE COURT OF APPEALS, 1953 TERM

IX. MUNICIPAL CORPORATIONS

Annexation of Territory

An action was brought by an owner of realty to review the determination of a town board in refusing to consent to a petition for annexation of territory to a village.¹ The applicable statute provides:

A petition for such annexation, . . . , and signed by a majority of the persons residing therein, *if any*, qualified to vote for town officers, or by the owners of a majority in value of the property therein . . .² [Emphasis added.]

Originally the statute contained the term *and also* instead of the term *or*.³ The contention of the town board is based on the premise that the words *if any* in the statute still necessitate that a majority of persons residing in the territory, qualified to vote, must sign the petition. In an earlier decision the court noted that it was no longer necessary for a petition to carry signatures of both a majority of property owners and a majority of the voters.⁴ The instant case goes a step further and interprets the section to mean that a petition can be signed by a majority of the property holders whether or not there are any qualified voters in the area.

In affirming the order of the Appellate Division, which annulled the town board's determination and directed it to execute its consent, the Court of Appeals stated that the town board merely performs the ministerial function of determining whether the petition complies with the statute,⁵ and inferred that any refusal of consent of the town board must be based solely on the specified statutory objections.⁶

Zoning

Although the General City Law gives a city council the right to restrict the use of property in accordance with a comprehensive plan,⁷ it cannot do so arbitrarily or unreasonably.⁸ Validity of a zoning ordinance depends upon maintaining a reasonable balance between the public interests and the opposing private interests in

1. *Wright v. Ransom*, 307 N. Y. 317, 121 N. E. 2d 244 (1954).

2. VILLAGE LAW § 348.

3. L. 1915 c. 257.

4. *Repper v. Patterson*, 306 N. Y. 683, 117 N. E. 2d 357 (1954).

5. *Accord*: In re *Village of Spring Valley*, 189 Misc. 324, 71 N. Y. S. 2d 848 (Sup. Ct. 1947).

6. See VILLAGE LAW § 348 (2).

7. GENERAL CITY LAW § 83.

8. 8 McQUILLAN, MUNICIPAL CORPORATIONS §25.05 (3d ed. 1949).