

# Town of Cornwall

Considering:

Ward Base Elections

and

The Coterminous  
Town/Village

- Gerald Benjamin
- September 24, 2018

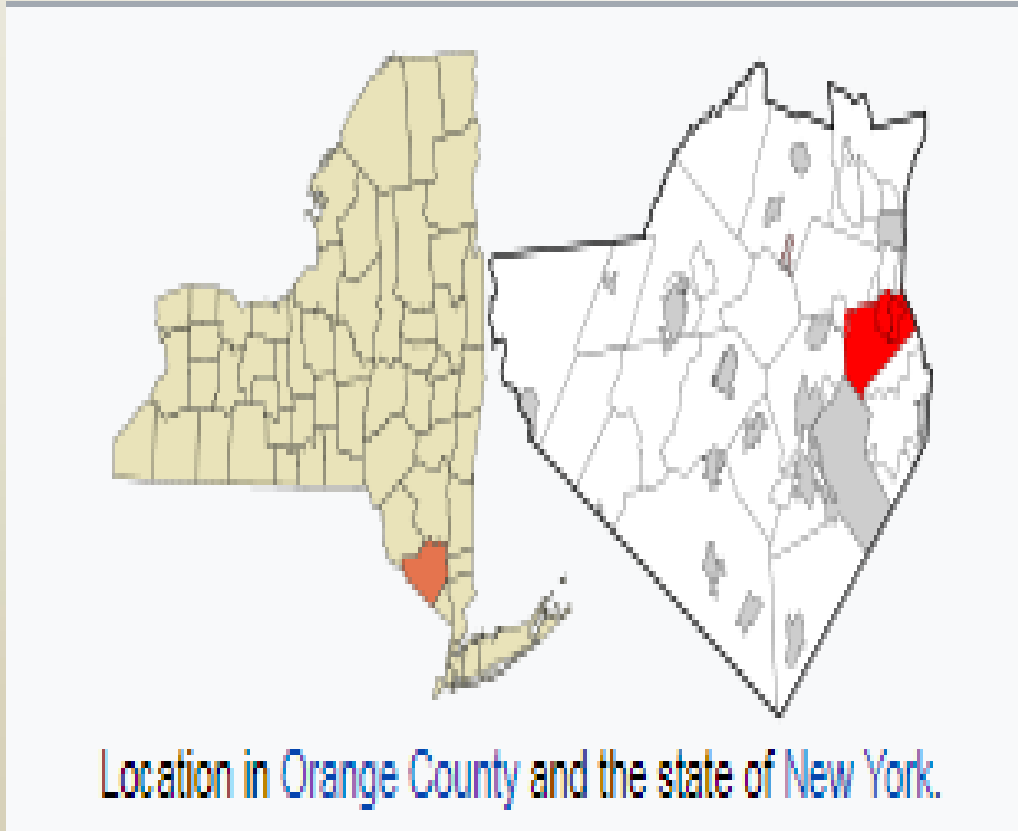


# Cornwall

Lets begin with some basics  
about the town of Cornwall  
and its governmental system

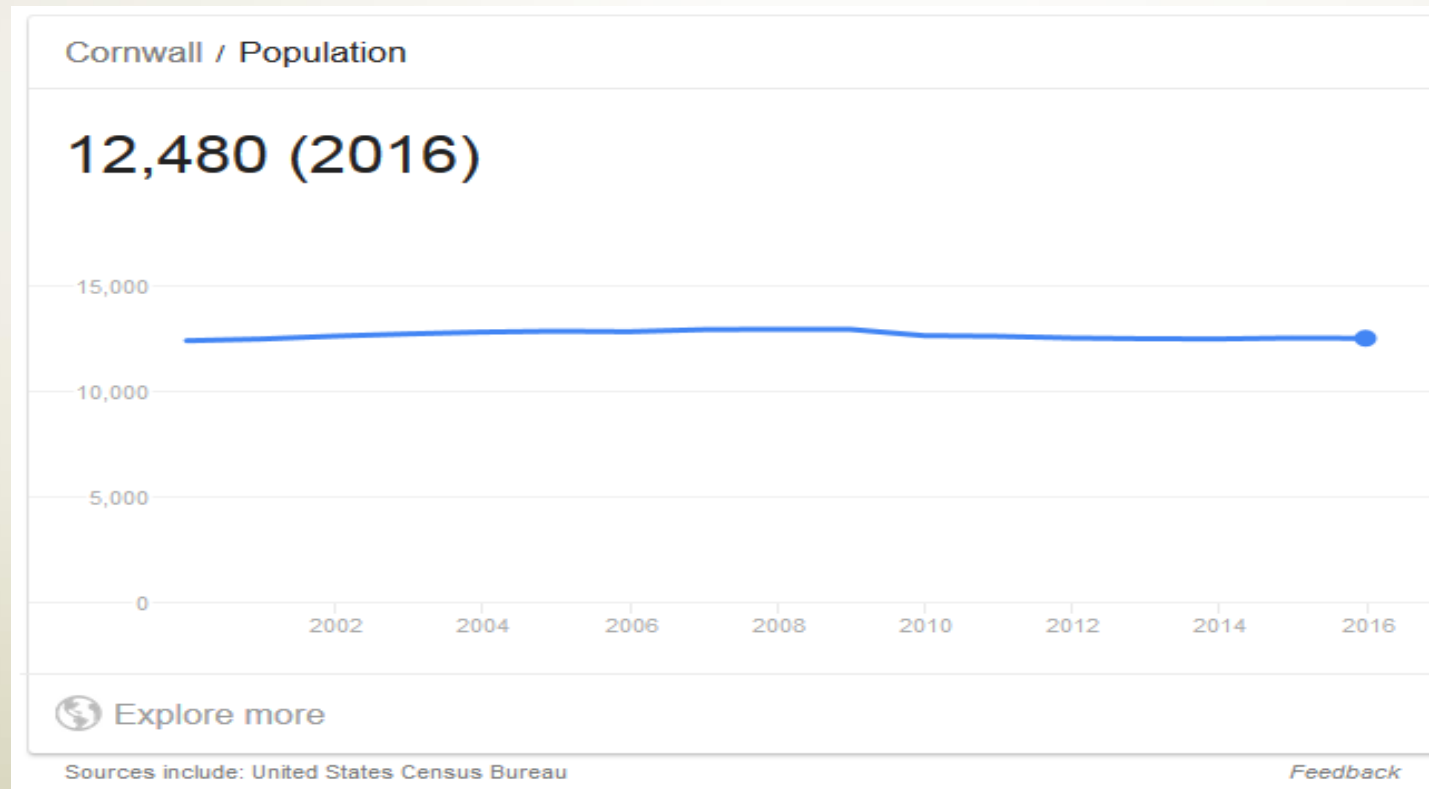


# Town of Cornwall



- 28.3 Square miles
- 12,480 People (2016)
- 4,589 Households
- Racially largely homogeneous
- 8,916 Registered voters (2017)
  - D – 2,772
  - R – 3,066
  - C – 153
  - WF – 42
  - NE – 2,356

# Population Stable



# Politics – Growing More competitive

Cornwall Town Board Elections							
Year	Supervisor			Town Board			Total Voters
2017	Randazzo -	D,C,I	unopposed	Braine	D,WF	1833	4078
				Castillo	D,WF	1845	
				Bunt	R,C,I	2021*	
				Russell	R,C,I	1916*	
2015	Randazzo	D, PCW	1566	Erwin	D,PCF	1200	2660
	Clark	R,REF,I	1008	Summerfield	D,PCF	1249*	
				McGee	R,C,I,REF	1147	
				McGuinness	R,C, REF	1253*	
2013	Clark	R	1813	Summerfield	D	1052	3400
	Greene-Kraff	C,I	1260	Bunt	R,C,I	1714	
				Russell	R,C,I	1580*	
2011	Quigley	R,C	unopposed	Beesecker	D,WF,I	823	2126
				Thomson		1315	
				Navarra		1552	
2009	Quigley	R.C	unopposed	Greene-Krafft	R,C	unopposed	2643
				Mazzocca	R,C	unopposed	
2007	Quigley	R,C	unopposed	Clark	R,C	unopposed	2061
				McGuinness	R,C	unopposed	



# Cornwall Elections – 2007-20017

## Observations

- Competition for the town board is growing
- The electorate engaged in town elections is growing (Last turnout was 45.7%)
- Republicans were formerly dominant
- Major party outcomes are now divided
- Minor party endorsements may be decisive

How do you wish to  
fill these seats on your town board



Cornwall currently elects its Supervisor  
and Four town council members in at-  
large elections



# Governance alternatives – Town of Cornwall

## Keep at-large election of town board members

- All voters in the town vote for all members of the town board
  - the town supervisor
  - all board members
- This is the common practice in NYS towns, and is what Cornwall does now. (NYS Town Law - §60 & §81.2.b)

## Adopt ward- based election of town board members

- All voters in the town vote for the town supervisor
- The town is divided into wards – voters vote for a single board member from the ward
- This is an available option under town law. It is a change that some people in Cornwall want to consider

# The at-large system predominates in NYS Towns

- In 2012, only 13 of New York's 932 Towns had ward systems.
- Over the last half century, when asked if they wanted a ward system, voters in most New York State towns said "No."
- But recently the towns in the Hudson Valley have adopted or sought to adopt ward systems to assure fair representation:
  - Ramapo
  - Blooming Grove
  - Mamakating

# At-Large Elections

- Those who favor say:
  - Avoid restricting the recruitment base for candidates
  - Advances consideration of the general interest. All members are elected in the whole jurisdiction and represent the whole town
- Those who oppose say:
  - Disconnect people in neighborhoods from their representatives
  - May result in all or most members being from a small part of the jurisdiction
  - May give power over all offices to a cohesive majority – and/or
  - May keep minorities from being fairly represented

At-large elections are a “red flag” under the Federal Voting Rights Act. They may be used to deny power to geographically concentrated racial or ethnic minority populations

Not an issue in Cornwall

# Ward-based Elections

- Those who favor say:
  - Makes sure that the interests of every geographic part of the jurisdiction is represented
  - Is most familiar to and preferred by voters
  - If minorities are geographically concentrated, assures their representation by a person of their choice
  - Makes campaigning less expensive
  - Confines the impact of a concentrated voting block
- Those who oppose say:
  - Produces no voice for the general, jurisdiction-wide interest
  - In districts with low turnout, may result in a council member being elected with very few votes
  - May result in less desired (for them) alternative partisan political balance

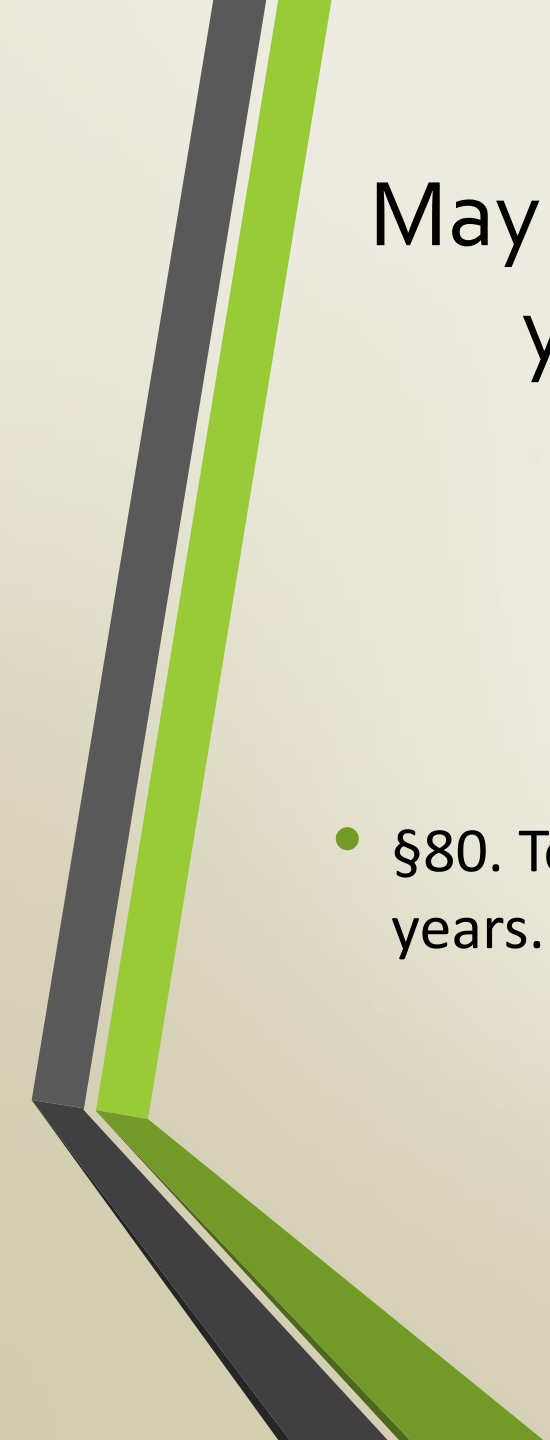
# ward systems may be created at the initiative of the town board, or upon petition

- Town Law. § 81. Election upon proposition. The town board may upon its own motion and shall upon a petition, as hereinafter provided, cause to be submitted at a special or biennial town election, a proposition:
  - 2. In any town of the first class:
    - (b) To establish or abolish the ward system for the election of councilmen in towns having four or six councilmen.

Note: In general, towns of the first class have populations of 10,000 or more. Cornwall's population in 2017 was estimate to be 12,552.

# Ward system – Petition requirement

- Town Law §81. 4.
- Signed by electors of the town qualified to vote upon a proposition to raise and expend money, in number equal to at least five per centum of the total votes cast for governor, but not be less than one hundred in a town of the first class (Required: 183 signatures)
- Filed in the office of the town clerk not less than sixty days, nor more than seventy-five days, prior to a biennial town election, to be submitted at such biennial election. (Note: Not this year)
- If a petition be presented at any other time, a special election shall be called to be held not less than sixty days, nor more than seventy-five days after the filing of such petition. (If general election day used: Sept. 7, 2018)



May the general election day in an even numbered year be used to meet the “special election” requirement?

- §80. Town elections for officers and referenda are to occur in odd numbered years. “All other elections are special elections.”

# Timing of Referendum


- Note that voter turnout differs in even and odd-numbered years, and therefore
- Composition of the electorate differs in odd and even numbered years.
- Note too that length of ballot differs in odd and even numbered years
- And referenda are less common in NYS and less prominent on the ballot
- These facts may be consequential for outcome



# Size of the Board – Another choice

- Town Law §81.2 (a,b) provides for an increase of the town board to 6 members or a decrease to 2
- Ramapo sought to make a change to six board members
- The U.S constitution requires that wards be substantially equal in population
- For local governments, the courts allow a variance of ward population size around the mean of 5%

Cornwall - Size of the Board and Ward Population				
# of members		Ward population range		
		Assume full build out -Greens LLC		
2		7391 - 8169		
4		3695 - 4085		
6		2455 - 2731		



Federal and State Law require decennial redistricting to assure fair representation in Congress, state legislatures and local jurisdictions that employ legislative districts.

# United States Constitution

## One Person, One Vote

- In decisions made in 1962 (*Baker v. Carr*) and 1964 (*Wesberry v. Sanders*, *Reynolds v. Sims*) the United States Supreme Court made clear that the equal protection clause of the U.S. Constitution requires legislative districts to be “substantially equal in population.” (XIV Amendment)
- In 1968 this principle was extended by the Court to apply to local governments (*Avery v. Midland County*)

# The Federal Voting Rights Act

- This law, first passed in 1965 and most recently renewed for 25 years in 2006, was designed to outlaw discrimination in voting procedures.
- It prohibits any "voting qualification or prerequisite to voting, or standard, practice, or procedure ... to deny or abridge the right of any citizen of the United States to vote on account of race or color."

# Minority group members have sued in New York localities to create a ward system to achieve fair representation

- <https://www.nytimes.com/2018/06/18/nyregion/long-island-voting-lawsuit.html>
- Hempstead, New Rochelle, Port Cornwall
- Latino residents in the hamlet of Brentwood recently sued the Town of Islip, claiming that its at-large system for electing the town board deprives them of political representation

# “Population” as the Basis for Redistricting

- Federal law requires the basis of districting to be “population”, notwithstanding that
- New York State Law provides that
  - “the term ‘population’ shall mean residents, citizens, or registered voters.”

# What is the Data?

- The decennial national census provides new population data for each municipality, providing both the necessity and the means to determine if federal and state standards are still being met in that place.
- New York State law requires use of “the latest statistical information obtainable from an official enumeration done at the same time for all the residents, citizens, or registered voters.”

# Standards and Criteria

## Federal Courts and “Equality”

- Federal courts require near absolute numerical equality in the population of U.S. Congressional districts
- Courts are more permissive with state and local governments, generally allowing variation within a range of plus or minus 5 percentage points from the mean district/ward population



# Federal Standards and Criteria

## Does the Voting Rights Act Apply in Cornwall?

- Is there a minority group that is sufficiently large and geographically concentrated to constitute a majority in a single-member ward?
- Do minority group members vote cohesively, as a bloc?
- Does the white majority vote as a bloc to defeat the minority group's preferred candidate? (*Thornberg v. Gingles (1986)* )

# Standards and Criteria

## New York State Law

- New York State (MHRL Section 10.13.c.) requires that a locality doing redistricting must, in this order of priority, create districts that allow for:
  - “substantially equal weight for the population”
  - “substantially fair and effective representation for the people of the local government as organized in political parties”
  - districts of “convenient and contiguous territory”



# WINNERS & LOSERS


# Guiding Rules:

## Questions for Cornwall

- Avoiding Gerrymandering
- Who will be responsible for the redistricting
  - The board
  - A commission appointed by the board
- What criteria does the town wish to add to those required by the national state constitutions and national and state law?
  - e.g. Preserving “communities of interest”
  - e.g. Honoring long-established neighborhood boundaries.
  - e.g. Taking account of administrative needs of the county Board of Elections

# Timing of Implementation

- If a referendum to create ward system passes in 2018, an election in wards is possible in 2019 and/or 2021.
- But the districts used in these elections may have to be redrawn for 2023 as a result of the 2020 census results.
- Should the initial referendum specify effecting the ward system for 2023?



# Continuing staggered elections and four year terms in a ward system

# Staggered Terms – Advantages and Disadvantages

## Advantages

- Continuity
- Tests town-wide sentiment in altered political contexts
- Brings varied proximity to election and therefore a different mix of time perspectives to the council
- If supervisor has a two year term, allows change in board majority at a single election
- Because of turnout differences in different years, outcomes may represent a different mix of voters

## Disadvantages

- Partisan effect is unpredictable, based on political context - may be marginal or alter council majority in midst of critical matters
- Fairness of indirect referendum on performance of others?
- Allows sitting council member to challenge supervisor w/o sacrificing seat
- Therefore makes government more contentious

# According to law, town elections must be held in odd-numbered years

- Town Law. § 80. Biennial town elections. Except as otherwise provided in this chapter, a biennial town election for the election of town officers and for the consideration of such questions as may be proposed by the town board or the duly qualified electors, pursuant to the provisions of this chapter, shall be held on the Tuesday next succeeding the first Monday in November of every odd-numbered year.



# One person one vote and redistricting

- When wards are used for elections, the Supreme Court requires that they be substantially equal in population
- The national census collects new, definitive population data every ten years, in the year ending with "0."
  - Census data is not predictably available to allow redistricting for the first odd-number year in every decade, the year ending in "1."
  - Local redistricting generally occurs in time to take effect in the year ending in "3."
- For local governments, the law allows "5% deviation" of ward population around the mean ward population.
  - If ward populations are within this range, no redistricting is needed.
  - If it is not, redistricting must occur.

# 12 is not evenly divisible by 10

- Using staggered elections in wards in odd numbered years with four year terms means that terms all won't end in one year, the year ending in "3" in every decade.  
  
(This after all is the goal of using staggered elections!)
- So decennial redistricting cannot take effect simultaneously in every ward.
- This means that the voting power of some voters will be diminished and that of others will be enhanced.

# Effect of redistricting on voters "A" and "B" with 4 year terms and staggered elections from wards

## Voter A:

votes in Old Ward I (black border) in 2029 and new Ward II (red border) in 2035.

Does not get to vote for six years for a board member.

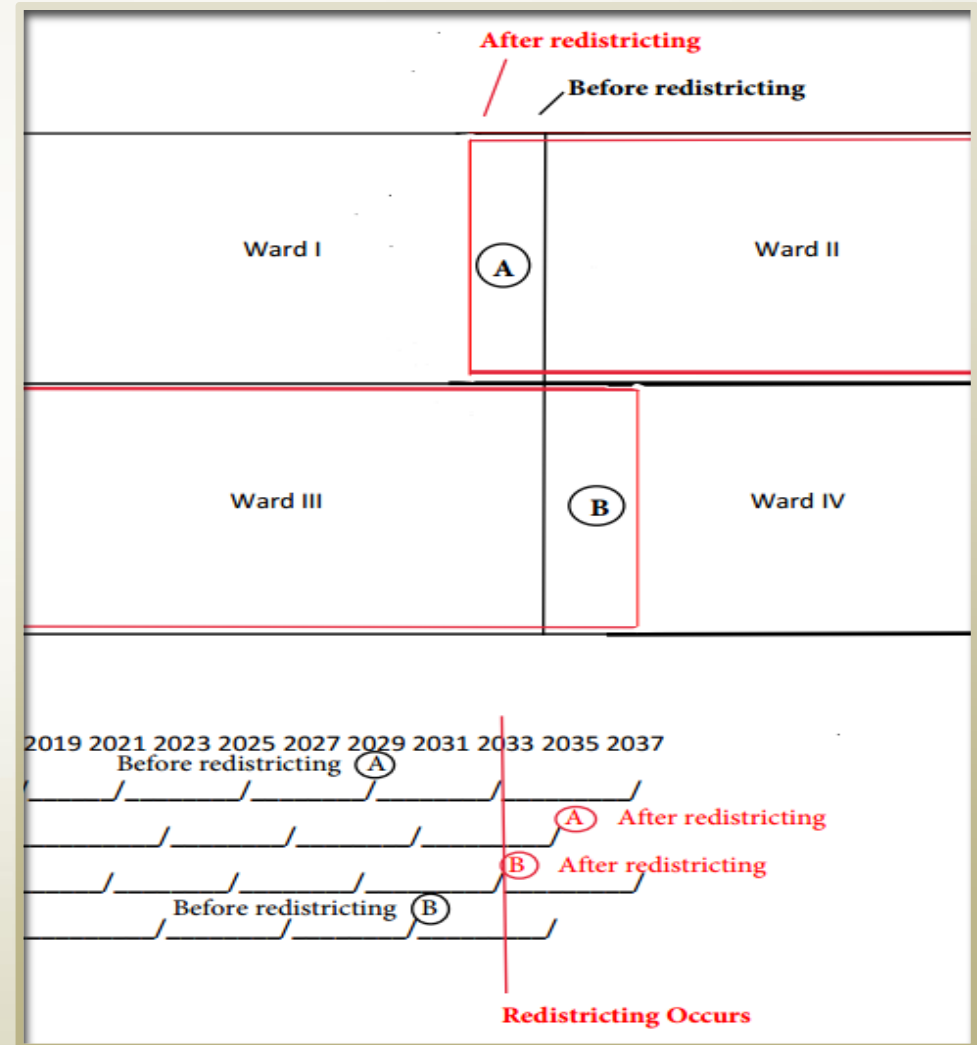
## Voter B:

Votes in old ward IV ( black border) in 2031

Votes in new ward III (red border) in 2033

Helped elect two board members, votes in two successive odd numbered years for board

**This violates the one-person-one vote principle**



# Using one 2 year term in every fourth election to permit staggered elections from wards, with 4 year terms, if decennial redistricting is required

- Start staggering in 2019
- Decennial redistricting done in 2021/22 effective for 2023 election (data availability)
- Employment of 2 year terms on a four election cycle to assure one-person-one-vote

- Ward I - 2019 – 2023 – 2027 – 2031 -- 2033 -- 2037

- 4 years 4 years 4 years 2 years 4 years

- Ward II - 2019 – 2021 – 2025 – 2029 – 2033 ---2035

- 2 years 4 years 4 years 4 years 2 years

- Begin in an odd numbered year following redistricting
- Employ 4 year terms
- Start half the seats with a two year term to achieve staggering
- Then all terms become four years
- Reconsider ward lines after next census
- If no change is needed, use same wards – 4 year terms
- If change is needed, hold election in new wards
- Start process over to preserve staggering

# Exceptions to general law may be obtained – NY State Constitution – Article IX§2.2

The state legislature:

“(2) Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b) except in the case of the city of New York, on certificate of necessity from the governor reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature. ”

## e.g. Exception for Broome County Towns – Town Elections in Even Numbered Years

Town Law § 86. “Town elections in the county of Broome. Biennial town elections in the several towns of the county of Broome, for the election of town officers and for the consideration of such questions as may be proposed by the town board or the duly qualified electors, pursuant to the provisions of this chapter, shall be held on the Tuesday next succeeding the first Monday in November of every even-numbered year.”

# Exception to General Law Not a Viable Path

- With any term length (except a one year term) and without a starting year specified, the combination of ward-based elections and the potential application of federal redistricting requirements always will require a decennial “re-start” provision to avoid violation of the one person one vote U.S. constitutional standard for equitable representation.



# Coterminous Town/Village





# What's the difference?

## Village

- Created and dissolved at local initiative, w/o town consent
- Centers of economic activity and population density
- May overlap town and county boundaries
- Greater range of services required
- Originally conceived as non-partisan (parties now optional)
- Usually smaller in geographic expanse

## Town

- Created at state initiative
- Covers all non-tribal territory except that in cities
- Organized within counties
- To deliver services required in rural areas
- Includes villagers as citizens and voters



# Convergence

- Rapid growth and suburbanization makes creation of villages to meet service needed a sub-optimal approach
- The differences in what villages and towns are empowered to do are now largely gone, though
  - in some measure each operate within a partly different legal framework and
  - services may be delivered in a different organizational manner (e.g. water and sewer)



# Characteristics of Coterminous Town/Village

- Shared borders
- Preserves governmental status of both
- May function as a single entity
- Elected officials are simultaneously
  - Mayor/Supervisor
  - Trustees/Board members

# Coterminous Towns/Villages: Examples

- Mt. Kisco
- Harrison
- Scarsdale
- Green Island
- East RoCornwall

# Creation of a Coterminous Town/Village

- Follow general process specified in village law to create a village in a town with no other village – e.g. Harrison and Scarsdale
- Create a new town with boundaries of an existing village – e.g. East RoCornwall and Mt. Kisco
- Request a special law from the state legislature – e.g. Green Island (two special acts)
- Existing village can annex all remaining territory w/i the town, so long as there is no other village in that town
- Adopt a joint consolidation agreement

# Creation of a village

Village Law § 2-200 Population and area requirements.

- 1. Population of at least five hundred persons,
- 2. In territory not already a part of a city or village that:
  - a. does not contain more than five square miles; or
  - b. is coterminous with the entire boundaries of a school, fire, fire protection, fire alarm, town special or town improvement district; or
  - c. is coterminous with parts of the boundaries of more than one school, fire, fire protection, fire alarm, town special or town improvement district, all of which are wholly contained within such limits and within one town; or
  - d. is coterminous with the entire boundaries of a town.

# Creation of a village: petition, certification and referendum process

Village Law § 2-202

A. Petition for incorporation including information and certifications specified in law required from

(1) At least twenty per cent of the residents of such territory  
qualified to vote for town officers in a town in which all or part of  
such territory is located, or

(2) The owners of more than fifty percent in assessed valuation of the real property in such territory assessed upon the last completed assessment roll of the town in which such territory is located.

B. Filed with town supervisor

\$6,000 fee

Public hearing

Sufficiency of petition

C. Referendum

D. Election of Mayor and Trustees and Organization of the Village



# Creation of a new coterminous town/village

- Town sends a home rule request to the state legislature
- Boundaries may be new
- Special law details process requirements, structure, transitional arrangements
- Referendum contingent on state requirement



# Governing Town/Villages

## Village Law Section XVII – Transitional Provisions

- Referendum to decide to operate principally as a town or as a village
- First government elected on the general election day (No option on election timing)
- Town highway superintendent no longer elected
- Detailed provisions made for delivery of specific services

# Coterminous Town/Village - Advantages

- Simplicity and accountability (If there are two initial entities)
- Economy, Efficiency
  - Dollars
  - Time
- Barrier to creation of other villages within the town (Harrison/Purchase)

# QUESTIONS?

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