

GREENBURGH TOWN BOARD RESPONSE TO CGR REPORT*

STATEMENT

The Greenburgh Town Board believes it is critical to present its opinion regarding the accuracy, adequacy, and legitimacy of the 2024 Center for Governmental Research's (CGR's) Study/Report on first-year-only estimates should an Edgemont Village (EV) be created, and to have our response published as a permanent exhibit to the CGR's final document. We relish this opportunity to place our views on record.

We believe all Greenburgh residents, prior to an incorporation referendum vote, must have the right to accurate and timely information reflecting the short and long-term effects which an Edgemont incorporation would have on those left behind in Unincorporated Greenburgh, as well as for the residents of a new EV. Unfortunately, the CGR report does not fully model the varying possibilities of expenses for residents, is challenging to understand, provides little new discernible information, raises many more questions than answers, and seems to skew heavily in the Edgemont Incorporation Committee's (EIC's) favor without adequate legal or factual reasoning.

It is important to understand that the Town Board has studied the issues in the report in depth, in consultation with the Town Attorney, our Department Heads, and knowledgeable community leaders. The Town Board is united in issuing this statement.

The Town Board, along with strong support from Greenburgh community groups and their leadership, has and will continue to work diligently to achieve two simple goals to combat the inequity of the proposed incorporation:

First, to endeavor to provide every one of the nearly 50,000 residents of Unincorporated Greenburgh, not solely the 7,800 residents of Edgemont, the right to equal representation under the law and, for registered voters, the right to vote in an incorporation referendum with fiscal and social scrutiny, which cannot be achieved by a three-month, time-limited study, such as the CGR study. Greenburgh has always functioned as an equal opportunity Town, and voter suppression and unequal representation is not acceptable anywhere and certainly not in Greenburgh.

Second, to abolish a discriminatory section of the most recent NYS Law specifically written to exclude Edgemont from the stringent incorporation processes required in this new legislation.

This new legislation, adopted as a "Chapter Amendment," protects the entirety of all NYS residents with the exception of the unincorporated area of Greenburgh, which includes

residents of Edgemont. The new legislation requires stringent financial filings by the incorporators and mandates that a specially formed NYS municipal committee study the provision of municipal services, financial operations, capital requirements and the social aspects of incorporation and their effects on the proposed Village and remaining Town before a referendum is scheduled.

THE CGR REPORT

The CGR report has reinforced our belief that Greenburgh is better, stronger, and more efficient/effective operating as one. We believe that the EIC's actions throughout this damaging, arduous and expensive 8-year incorporation process has created a scenario in which very limited information has been provided to the Edgemont community, and no substantial information has been provided to the remaining residents of the Unincorporated Town. It has become crystal clear that with greater and more accurate information, the enormous risks inherent in incorporation, for both the Edgemont residents and the Unincorporated Area that would remain, becomes even more evident.

Although we had hoped the CGR Report would provide a clear understanding of the risks of incorporation to all parties concerned, we as a Board respectfully submit that this NYS-limited three month Study/Report has fallen dangerously short of its intention, is politically motivated, generates confusion, and uncovers far more questions than it provides answers. Most concerning, the Town Board believes that important information we provided to CGR was dismissed or misrepresented.

The Greenburgh community, including anti-incorporation residents of Edgemont, came together on Wednesday evening, March 20, 2024 at Town Hall, to witness CGR's presentation of their study. What transpired was an extraordinary outpouring of anger and frustration from our community leaders and members of the Town Board, as approximately 200 of our neighbors attended the meeting. We, the Greenburgh Town Board, are in absolute consonance with the outrage of the community.

The first page of the CGR Report states, *"Because the Village of Edgemont does not yet, and may never, exist, there is no mayor, or village board to make decisions on the suite of services the village offers or how those services are provided."* Plainly, CGR admits that their report is moot without the proper modelling of all reasonable outcomes, as no actual decisions on any aspect of Village administration will be made until after an incorporation referendum is affirmatively decided, an Edgemont Village Board (EVB) is elected, and a Village manager is identified and hired. This process will take months, ensuring that Edgemont residents will "walk blindly" into the referendum voting booth with no clarity about who will provide their services, the level of services and their cost. *Those residents remaining in the Unincorporated Town, the Greenburgh Town Board, and the Town's Department Heads will be waiting as well,*

as no planning can take place until what the Town Board expects to be a difficult negotiation process with the EVB concludes. The risk is enormous for all concerned parties.

CGR states in the Report, *“both a new Village board and the Town Board could make very different decisions about whether to share services than the ones we model in our scenarios.”*

Fact: Nobody can forecast with certainty the exact impact of an Edgemont incorporation based upon the 100+ year old prior NYS legislation which will control this process, a process that the NYS legislators rejected for every other area of NYS.

NYS Senate Majority Leader Stewart Cousins contracted with CGR at the request of the EIC, and the first page of the CGR Report states, *“our report is based on the intentions expressed by the Edgemont Incorporation Committee (EIC) about what services the Village would offer and how it may provide them.”* The question raised at CGR’s March 20, 2024 Town Hall presentation of the report, by so many of our residents regarding the impartiality of this study, is underscored in CGR’s own statement.

The Town Board expresses the following grave concerns and risks for our constituents in Unincorporated Greenburgh, including those in Edgemont. The following reflect some of what we believe to be the major areas of greatest risk and uncertainty:

1- WATER AND SEWER SERVICES AND RESPONSIBILITY FOR AN AGING INFRASTRUCTURE

The Greenburgh Consolidated Water District #1 currently provides water and oversees sewer services for the territory which is expected to be the proposed Village of Edgemont (EV). As of this date, the EIC has refused to share its proposed territorial boundaries with CGR, the community or the Town, and it is therefore impossible to determine the actual boundaries of the proposed Village. However, the Town Board has stated emphatically that water and sewer services will not be provided to EV without the required installation of the five master meters, nor will responsibility or liability for the very costly repair and/or replacement of the aging water/sewer infrastructure known to exist within the new EV be assumed by the Town.

The EIC has consistently, but incorrectly, stated, without having had any prior discussion about this issue with the Town, that everything will remain the same. The Town Board has stated that it would be willing to act as a “wholesale provider” for an Edgemont Village, under an Inter-Municipal Agreement (IMA), which is the same model as is currently used to service the Village of Irvington, but *the responsibility for servicing and monitoring, as well as maintaining the EV water/sewer infrastructure and the streets above, would remain the responsibility of the new Village.* Please note that

each of the other five Villages of Greenburgh (Irvington operates under an IMA with GCWD#1) provide for their own services.

The EIC has never forecasted capital and operational costs for EV water/sewer operations, but the price tag will be substantial. Capital costs alone for sub-metering could cost into the millions of dollars. CGR does not include many of these potential costs in their budget projections, despite the Town having provided the relevant information.

2- LONG TERM UNINCORPORATED TOWN LIABILITIES

Like all municipalities, Towns have liabilities which accrue over decades. Greenburgh maintains these types of liabilities and they are paid through residents' property taxes and through additional revenues generated by Town fees and grants, which the Unincorporated Town receives.

a- LONG TERM CAPITAL BOND DEBT LIABILITY

The EIC has never consulted with the Town regarding these liabilities and has stated that an EV would be responsible for its share (approximately 25%) of "Bond Liability," but no other liabilities. (Bonds are sold each year to secure the funds for long-term capital spending, including but not limited to roads, major equipment purchases, and infrastructure). The outstanding amount of these Bonds are published annually on the Town website and available to all.

The balance of debt projected for 12/31/2024, non-inclusive of new Bonds which will be sold later in 2024, is noted as \$73,898,145, of which \$18,500,000 (approximately 25%) would accrue to EV. The Town has explained that it would require EV to fund their share of Bond debt within the first year of their operation, at current rates, but the EIC instead, having never asked the Town, states that EV would annually pay their share of servicing the debt, which is currently at a considerably lower interest rate than available today. Once again, Bond Debt will cost more than the EIC projected. *The Town Board's intention to collect EV's share of Bond Debt during the first year of its operation was stated clearly to CGR, but they chose to dismiss the Board's requirement and utilized the EIC plan.*

b- OTHER MEDICAL INSURANCE PAYMENTS FOR RETIREES

The Town of Greenburgh currently, based upon the legal requirements of prior labor agreements, pays the health insurance for more than 400 retired employees and their families. The budget line is called Other Post Employment Benefits or "OPEB". In addition, it is important to understand that during Edgemont's tenure as a part of the Unincorporated Town, current employees have also earned the rights to such benefits, for which EV will continue to maintain a share of the liability. The liability

for these medical insurance costs is outlined in a report from an actuarial firm named “Milliman.” Although the last report was completed 12/31/2022, the report reflects more than \$273,000,000 in liability for meeting the contractual obligations of our loyal employees, many decades into the future.

This liability was generated while Edgemont was a part of Greenburgh, but the EIC, which never mentioned these liabilities in their previous reports, and again, never discussed them with the Town, now says these liabilities would not apply to them should they incorporate. The Town Board has stated, without question, that it is wholly unacceptable, both legally and morally, for Edgemont to leave Greenburgh without paying its share of all liabilities. Allowing this would set a dangerous precedent throughout New York State and likely lead to more incorporation efforts than ever before.

The Greenburgh Town Attorney is confident that the Town would prevail in litigating this issue. However, the real risk for EV is that it will have to pay down its share of nearly \$300,000,000 to cover its liability over decades. The EIC neglected to include it in their budget forecasting. CGR merely mentions this issue in their Report and glosses over the reality that after a successful and very expensive litigation, either the residents of EV, or those of the Unincorporated Town, will be saddled for decades with an annual servicing cost of nearly \$2,000,000, EV’s share of this liability. Medical insurance premiums continue to rise, people are living longer and Greenburgh employee retirement amounts have increased every year. Please note, the 2024 servicing cost for medical insurance for our retirees is approximately \$7,500,000. EV would be responsible for 25% of that amount, \$1,875,000, for decades into the future as well.

c. PROPERTY TAX ASSESSMENT CHALLENGES (CERTIORARI)

In the same manner as noted above, the EIC has not informed the residents of Edgemont about property tax refunds (certiorari) for those who have previously challenged their property tax assessment for periods beginning as early as 2010, and ending on the date EV would be formalized. Currently these liabilities are projected at \$10,000,000 to the Town and therefore, \$2,500,000 to EV, paid over several years. Historically these “refunds” have an annual servicing cost to the Town of approximately \$1,200,000. EV’s share would be \$300,000/year, should the Town prevail in another expensive and lengthy litigation. The CGR Study mentions these liabilities but chooses not to include them in their financial forecasting. Again, the Greenburgh Town Attorney is confident that the Town would prevail in litigating this issue.

d. OUTSTANDING LITIGATION AGAINST THE TOWN

Litigation against the Town from claims-- such as property damage, personal injury, wrongful arrests, premises liability, automobile liability, commercial, general liability cases, arbitration, labor litigation matters including worker's compensation, dating back many years-- exists as in any municipality and will surely occur in an EV, should incorporation be successful.

The cost for these litigations, several which occurred many years ago, will eventually be settled or decided by a court. These matters occurred during the period Edgemont was part of the Unincorporated Town and the Town Attorney represented the residents of Edgemont during these proceedings and to the present day. Just like the previous liabilities noted above, the Town will pursue EV for their share of the associated net settlement costs, after liability insurance reimbursement.

Although the potential monetary costs of these legal matters cannot be accurately valued at this time, it is evident that after insurance coverage, these amounts could easily be in the tens of millions of dollars for the Town and that EV would be responsible for its 25% share of this liability. Again, the EIC has never approached the Town regarding the extent of these liabilities and CGR has in several instances mentioned the potential loss. It did not emphasize the serious risk or include the costs in their budget forecasting, as they have neglected to do with many potential liabilities or risks which might impede an EV incorporation.

The Town states without question that it will pursue a future EV for its equitable and proportionate share of these debts because said debts were accrued during the period when Edgemont was part of the Unincorporated Town of Greenburgh. This is a logical and equitable concept. Once again, the Town Attorney is confident that like the other liabilities noted above, the Town would prevail in litigation.

The EIC states the EV will have no liability and can leave the Town without bearing its fair share of responsibility for tens of millions of dollars in debt accrued while it was part of Unincorporated Greenburgh. CGR mentions the difference of opinion, but, rightfully, offers no concrete opinion based on case law. These issues will be subject to litigation, with the final decision being rendered by a Court of Law.

This level of debt would be catastrophic, and render a potential EV challenging, if not impossible, to sustain. The CGR report is self-limited to the first year of a potential EV, avoiding many of the costs that would be determined if the new

NYS law that applies to all other areas of NYS also applied to the Town of Greenburgh. The risk for all concerned is very real and enormous in scope.

3- EIC USES ANY MEANS NECESSARY TO JUSTIFY EV FISCAL VIABILITY

For decades the firefighters of the Greenville Fire District (GFD), who service the Edgemont area of Unincorporated Greenburgh, have complained that they are understaffed and do not have adequate personnel to meet municipal standards. Most recently, the GFD Board, with the full support of the EIC, sued Formation Shelbourne, a proposed assisted living facility in Edgemont, because it would entail an additional 100 medical calls each year, overwhelming an already understaffed GFD. However, in order for the EIC to achieve a break-even budget for an EV, the CGR study “appropriates” \$450,000 from the coffers of the GFD, to fund the proposed Village. Regrettably, CGR places the residents of Edgemont and our firefighters at risk as they attempt to justify that EV can sustain itself fiscally.

4- UNDISCERNABLE CGR ANALYSIS

CGR provides data and formulae which are difficult to comprehend and provides little understanding of the impact of EV’s proposed incorporation on operating budgets. However, the “numbers” can be more simply presented in approximates to provide perspective for Town residents. The following are forecasted utilizing CGR’s model for providing services, which, it must be emphasized, are not the same as the Town Board’s plan in several ways. Note, purchase of library services by EV are not included, as it is unlikely EV would consider contracting with the Town when most services offered by the Greenburgh Public Library (GPL) can be accessed with any Westchester Library’s card, for dramatically less money.

REVENUE LOST TO THE UNINCORPORATED TOWN

EDGEMONT VILLAGE PROPERTY TAX REVENUE:	\$15,300,300
EDGEMONT VILLAGE FEE REVENUE:	\$3,200,000
TOTAL REVENUE EV WOULD TAKE FROM UNINC. TOWN BUDGET:	\$18,500,000

REVENUE PAID FROM EDGEMONT VILLAGE TO THE UNINCORPORATED TOWN

SANITATION CONTRACT:	\$ 1,300,000
HIGHWAYS AND PUBLIC WORKS CONTRACT:	\$ 2,300,000
POLICE FUND (GPD/EMS):	\$ 7,800,000

BOND SERVICING REIMBURSEMENT:	\$ 2,900,000
TOTAL REVENUE TO THE UNINCORPORATED TOWN FROM EDGEMONT:	\$14,300,000

<u>2024 LOSS TO GREENBURGH OF OPERATING FUNDS</u>	<u>\$ 4,200,000*</u>
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*Non-inclusive of \$500,000 additional lost from the Greenburgh Town-wide (A) Budget

Scenario 1, in which EV buys all their needed services from the Town, is the most unlikely outcome. However, scenarios 2 and 3 are also unlikely and unrealistic. To present them as viable possibilities when, in the words of CGR, “both a new Village board and the Town Board could make very different decisions about whether to share services than the ones we model in our scenarios” and include projected tax rate increases is disingenuous and misleading as there are too many questionable and unaddressed assumptions that could significantly increase those rates. The risks and questions abound. CGR did what it could in the time allotted to it, with an arbitrary but firm April 1, 2024 deadline for completion after the law was changed this January. In reality, the only conclusion is that a more in depth analysis is needed to determine if the creation of EV and the remaining incorporation would be viable.

5- **THE CGR STUDY FORECASTS JUST ONE YEAR OF EV INCORPORATION**

Regrettably, the CGR study, by its own terms, forecasts only one year of operation for a proposed EV even though the Chapter Amendment (S8001) deems this study of one year as valid until 2040 (16 years). There is no provision for further study and no accommodation for significant cost escalations within this time frame, including, but not limited to, for health insurance, purchase of service contract costs, salaries, and costs of goods and materials.

However, although the cost of running Unincorporated Greenburgh continues to increase annually, we have experienced concomitant, substantial growth through development, increasing fee income and Greenburgh’s property tax base. The territory of the Unincorporated Town boasts large swarths of valuable, developable land, and is viewed by the Real Estate and Business community as a wonderful area for development.

Through its burgeoning development, the Town, even during the most difficult years of Covid, was able to provide our residents with stabilized budgets to diminish the financial hardship of those difficult times. Unincorporated Greenburgh development continues today, as the Town Board fosters and supports it. Growth will continue in the future, with new facilities, homes and residences bringing new and increased revenues to the Town and employment opportunities to our residents. The Town Board believes in moving forward with well thought out, meaningful development projects.

CGR states in their report what the EIC has been stating for nearly a decade, “The primary motivation for incorporation is control over planning, development, and land.” Significant development is not an option for EV because there are few undeveloped sites in Edgemont to develop, and, as the cost of land is appreciable higher, it seems the only option to meet future EV cost increases, which are surely on the horizon, for sustaining a new EV, will be increased property taxes.

6- CGR DISMISSES THE SOCIAL AND MORAL ISSUE

Although the CGR report contains pages of statistics regarding race, population and income, it does not speak to the inherent social narrative which highlights just another of the inequities of incorporation. After a proposed Edgemont incorporation, both Edgemont and the remaining town will be rendered less racially and economically diverse than they are today.

7- EIC IS RELYING ON CONTINUING TO BE ABLE TO USE CRANE POND AND OTHER UNINCORPORATED GREENBURGH (B BUDGET) PARKS WITHOUT CONTINUING TO CONTRIBUTE TO THEIR UPKEEP

The EIC assures residents they will still be able to use Crane Pond, wholly contained within the physical boundaries of the proposed EV, but they will no longer have to contribute to the cost of its upkeep should Edgemont incorporate because it is a B budget item. The EIC erroneously believes that EV residents will have access to the pond while shifting the costs to the remaining Unincorporated Greenburgh. The same is said for many of the parks, which do not currently have access restricted to Unincorporated Greenburgh residents. In fact, in the case of Crane Pond, should an EV resident get hurt or worse on the B budget pond, a case would be made that the remaining Unincorporated Greenburgh would be liable, not the proposed EV, because access should have been restricted and it is a B budget property. The Town will have no choice but to protect the remaining Unincorporated Greenburgh residents from that liability should an EV be created. This is just one example how the EIC proposes to shift costs to the remaining Unincorporated Greenburgh to try to make it appear an EV would be viable without impact to the EV residents.

SUMMATION, THE JEOPARDY FOR UNINCORPORATED GREENBURGH

The \$4,200,000 loss to Unincorporated Greenburgh revenue is an absolute best-case scenario, as months after a successful referendum vote an EV Board will review EV options, without regard to the EIC's position or the CGR Report. It will then decide if it will purchase any or all services from the Unincorporated Town. If the new EVB chooses to purchase Police, EMS, Highway and Sanitation, as proposed by the EIC, the Town Board will endeavor to find a path to cut \$4,200,000 in costs, nearly all resulting in reduction of personnel, while trying to not decimate the high level of services currently provided to our residents. This task will be challenging, and we envision would result in the termination of 25-30 full time Town employees.

In the event the EV Board decides to go forward with less-costly options for EV, such as the use of private, non-union workers and services, which have both been openly and publicly discussed by the EIC, the loss to Unincorporated Greenburgh will increase by millions of dollars. If so, far more drastic measures will need to be employed, including the imposition of

substantial increases in residential property taxes. Taking the concept further, if the EV Board decides to outsource all its services, Unincorporated Greenburgh would not be able to exist in its current state.

Incorporation also would impose significant risk to the new EV. The exclusion of OPEB, certiorari refunds, litigation settlements, water and sewer infrastructure installation, maintenance and repair in the CGR study minimizes the devastating impact these increased costs will have on EV taxpayers and will increase the tax rate significantly above that stated in the report. The five water meters alone have been estimated to be \$2.5 million.

On February 28, 2024, a resolution was unanimously approved by the Town Board seeking to amend Article Two of the NYS Village Law by rescinding the arbitrary Chapter Amendment to Senate Bill S8001 (TB-1 02/28/24). The Town Board is hopeful that Legislators will immediately act on this request before further irreparable harm occurs. It should be noted that at no point did the Town Board approve a Home Rule request initially seeking the Chapter Amendment, nor did any Board Member show support orally or through correspondence.

It is clear that Unincorporated Greenburgh or EV will assume millions of dollars of additional risk and liability. We are confident that we will prevail in court but, at the end of the day, should EV incorporate, everyone loses.

As representatives of the entire Town, the Town Board submits this memorandum in an attempt to protect the interests of all residents, including those in Edgemont and in the other areas of the Unincorporated Town.

The Town Board of the Town of Greenburgh
4/03/2024