

MINUTES OF THE SPECIAL MEETING OF THE TOWN BOARD OF THE TOWN OF THURMAN, NY HELD JUNE 06, 2018 AT THE TOWN HALL, 311 ATHOL ROAD, ATHOL, NEW YORK, COMMENCING AT 6:30 PM....

PRESENT: Mrs. Joan Harris, Councilwoman

Mrs. Cynthia Hyde, Supervisor

ABSENT: Councilwoman Ackley, Councilman Needham, Councilwoman Seaman

RECORDING SECRETARY: Susan E. Staples

At **6:30pm** the **Supervisor** announced that there could be no meeting without a quorum. She then read two letters out loud which had been sent to Deb Capezzuti(Dan Stec's office) from our law firm Miller, Mannix, Schachner and Hafner. She then noted the section in the resolution that had been passed in 2016. She then stated that she had spoken with **Dan Stec**, who told the **Supervisor** of the need for the resolution in the second letter. The meeting ended at **7:00pm**.

Attachments:

Respectfully Submitted,

Susan E Staples, Town Clerk

June 18, 2018

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ATTORNEYS AT LAW

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June 1, 2018

Deb Capezzuti, Chief of Staff
State Assembly District Office
140 Glen Street
Glens Falls, New York 12801

Via Email

Re: T/O Thurman - Need for Validating Act

Dear Deb:

It was a pleasure speaking with you and Assemblyman Dan Stec this afternoon. As we discussed, we represent the Town of Thurman as Town Counsel until June 1st, 2018.

At the end of 2016, the Thurman Town Board wished to borrow money for a project which partially was to meet the requirements of a DEC Consent Order and partially to build a new storage shed in which to properly and safely store salt. As part of preparing the Bond Resolution, we went over the underlying requirements as we always do. For a town located in the Adirondacks, one of the questions we ask is whether or not the town has state-owned land subject to taxation which exceeds 30% of the town's average full valuation. (Local Finance Law section 104.10(3)) We were informed that the Town did not exceed that threshold. We spoke directly with the then Town Supervisor who we believe truly understood this to be the case. If we had noticed any question or hesitation regarding this threshold, we routinely would then seek a written calculation by the Town Assessor. Four Town Board members adopted the Bond Resolution where they confirmed that the Town did not exceed this threshold. A few months later in 2017, the new Town Supervisor met with us to review and sign the initial Bond Anticipation Note and related financing documents. During that meeting we went over the various certifications that were required and advised her the previous Supervisor and Town Board had confirmed that the Town did not exceed this threshold. On May 31, 2017, the Town Supervisor signed the initial Bond Anticipation Note in the amount of \$313,000.

The Town Supervisor, as Chief Fiscal Officer, pursuant to the authority granted in the Bond Resolution arranged to pay \$13,000 in principal plus all outstanding interest and to

Deb Capezzuti
Re: Town of Thurman
June 1, 2018
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finance the remaining \$300,000 in the form of a Statutory Installment Bond with Glens Falls National Bank, which would be paid over the next four years. When we met with the Town Supervisor and Town Clerk earlier this week and explained the various certifications related to the financing the Town Supervisor stated that she did not believe that the Town was under the statutory threshold. We immediately contacted the Assessor and had him calculate the percentage of state-owned land subject to taxation. He informed us that the actual figure is 37.17%. This means that the Town of Thurman mistakenly issued a BAN without receiving the State Comptroller's Office consent required under the Local Finance Law. We spoke several times with the State Comptroller's Office and they informed us they cannot grant consent after the fact. The only other options that they, and we, could determine do not apply as the Town does not have \$300,000 in available funds to pay the remaining principal in full or \$300,000 in a Capital Reserve Fund which could be "loaned" to finance this debt. They were very responsive and helpful but the Town's options are very limited. Under the New York State Constitution, the Town is required to pay this debt and we need the Legislature's help.

Based on our research and the help of the State Comptroller's Office, the only option we are aware of is a validating act by the NYS Legislature.

We attach the Bond Resolution, Proof of Publication of Estoppel Notice and Summary of Bond Resolution, \$313,000 BAN dated May 31, 2017, Town Assessor Calculation of the percentage of state-owned land subject to taxation and Proposed Statutory Installment Bond which the Town was ready to issue before the Town Supervisor and Town Assessor determined the Town exceeded the statutory threshold. We also attach two validating acts adopted in the past which were provided by the SCO.

Please let us know if you need any other information. However, as of June 8th all communication needs to be directed to the Town Supervisor as we will no longer be Town Counsel.

Thank you and Assemblyman Stec for any help you can provide to the Town.

Very truly yours,

MILLER, MANNIX, SCHACHNER & HAFNER, LLC

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Robert H. Hafner

RHH/kjm

cc: Cynthia Hyde, Thurman Town Supervisor
Thurman Town Board

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June 6, 2018

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Deb Capezzuti, Chief of Staff
State Assembly District Office
140 Glen Street
Glens Falls, New York 12801

Via Email: capezzd@assembly.state.ny.us

Re: Town of Thurman - Need for Validating Act

Dear Deb:

As requested, we attach a proposed Validating Act for the Town of Thurman relating to its December 27, 2016 Bond Resolution and its failure to obtain State Comptroller Office approval as it mistakenly thought it was under the 30% threshold detailed in Local Finance Law Section 104.10(3). We based it roughly on the 2000 Validating Act relating to the Town of Dannemora provided by the State Comptroller Office.

We understand the Town Supervisor has tried to schedule an emergency meeting tonight for the Town Board to adopt a Resolution authorizing the Supervisor to submit a Home Rule Request requesting the Legislature to approve a Validating Act. We do not know whether a quorum of Board Members will be able to attend. We have informed the Town of the crucial need for quick action, because we believe that the consequences if the Town does not get this relief may be catastrophic.

As previously discussed, any further communications should be directly with the Town Supervisor. Thank you and Assemblyman Stec for all your help on this very important matter to the Town of Thurman.

Very truly yours,

MILLER, MANNIX, SCHACHNER & HAFNER, LLC

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Robert H. Hafner

RHH/kjm

cc: Cynthia Hyde, Town Supervisor

Thurman Town Board

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PROPOSED VALIDATING ACT FOR TOWN OF THURMAN

THURMAN, TOWN OF - TOWN BOARD - CERTAIN ACTS AND PROCEEDINGS - VALIDATION

AN ACT to legalize, validate, ratify and confirm certain acts and proceedings of the Town Board of the Town of Thurman, Warren County, New York, in relation to the issuance of obligations for the financing of alternate water supply systems for five homes as required by a Consent Order of the New York State Department of Environmental Conservation and also for a municipal building.

Approved and effective June _____, 2018.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. It is hereby found and determined:

(a) that the Town Board of the Town of Thurman, County of Warren, has heretofore adopted a bond resolution dated December 27, 2016 and has issued a bond anticipation note pursuant to such bond resolution for the undertaking of the installation of water supply systems for five homes pursuant to a Consent Order of the New York State Department of Environmental Conservation and for a municipal building;

(b) that the Town Board of the Town of Thurman, County of Warren, has heretofore adopted a bond resolution dated December 27, 2016 and has issued a bond anticipation note in the principal amount of \$313,000 on May 31, 2017 pursuant to such bond resolution for the undertaking of such improvements;

(c) that the principal payment made by the Town on the \$313,000 bond anticipation note is described as follows: \$13,000 on May 31, 2018 leaving \$300,000 in principal outstanding and overdue;

(d) that the Town failed to obtain the permission of the State Comptroller pursuant to Paragraph 3 of Section 104.10 of the Local Finance Law prior to the issuance of the bond anticipation note issued pursuant to the bond resolution dated December 27, 2016;

Section 2. Notwithstanding the defect described in Section 1 of this act, including, but not limited to, the failure to obtain the permission of the State Comptroller pursuant to Paragraph 3 of Section 104.10 of the Local Finance Law, all proceedings and actions had and taken by the Town of Thurman, County of Warren, in relation to the issuance of the bond anticipation note under the bond resolution dated December 27, 2016 are hereby legalized, validated, ratified and confirmed and any such notes, renewal notes or statutory installment bonds which may be issued pursuant to such bond resolution are hereby determined and declared to be valid and legal obligations of said Town.

Section 3. If any clause, sentence, subdivision, paragraph, section or part of this act be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the controversy in which such judgment shall have been rendered.

Section 4. This act shall take effect immediately.