

SPECIAL BOARD MEETING

January 31, 2013

6:30 p.m.

A Special Board meeting of the Town Board of St. Armand was held on the above date at the Town Hall, Bloomingdale, NY.

This meeting was advertised in the Adirondack Daily Enterprise.

PRESENT: Town Supervisor Charles Whitson, Jr., Deputy Supervisor Samuel A. Grimone, Councilman Donald Amell, Councilman Earl Dakin, Town Clerk Davina Thurston, Stan Ingison, Sewer Superintendant

GUESTS: Sandy Hayes, Jennifer L. Fuller, Dustin Fuller, Todd Hodgson, AES Northeast Engineer

Supervisor Whitson called the meeting to order at 6:30 p.m.

Councilperson Dakin led the Pledge of Allegiance.

RESOLUTION 15 OF 2013 – Appointment of Jennifer L. Fuller

Deputy Supervisor Grimone, who moved its adoption, offered the following Resolution:

WHEREAS, the Town Board of the Town of St. Armand has a vacant seat due to the resignation of Charles Whitson, Jr., the Board appoints Jennifer L. Fuller to the Town Board for the term of January 29, 2013 to December 31, 2013.

This motion was duly seconded by Councilperson Amell, and adopted as follows:

Supervisor, Charles Whitson, Jr	AYE
Samuel Grimone, Deputy Supervisor	AYE
Donald Amell, and Councilperson	AYE
Earl Dakin, Jr., Councilperson	AYE

Dated January 31, 2013

Davina M. Thurston
Town Clerk

Town Clerk Davina Thurston performed the swearing in of Jennifer L. Fuller to the Town Board.

MINUTES

A motion was made by Councilperson Amell and seconded by Councilperson Fuller to accept the Regular Town Board Minutes of January 8, 2013 and the Special Town Board Minutes of January 22, 2013. Councilpersons Dakin, Amell and Fuller and Supervisor Whitson were in favor. Deputy Supervisor Grimone abstained from voting. Motion carried.

PUBLIC INTEREST ORDER 1 OF 2013

– THE INCREASE AND IMPROVEMENT OF FACILITIES OF THE BLOOMINGDALE SEWER DISTRICT IN THE TOWN OF ST. ARMAND, ESSEX COUNTY, NEW YORK:

Deputy Supervisor Grimone who moved its adoption, offered the following Public Interest Order:

WHEREAS, the Town Board of the Town of St. Armand, Essex County, New York, has duly caused to be prepared a map, plan and report including an estimate of cost, pursuant to Section 202-b of the Town Law, relating to the acquisition of a parcel of land adjacent to the existing River Road pump station and construction thereon of a new pump station, together with reconstruction of the existing pump station, including, in each case, original furnishings, equipment, machinery, apparatus, appurtenances and incidental improvements and expenses in connection therewith, at a maximum estimated cost of \$4,805,670.90; and

WHEREAS, said capital project has been determined to be a Type II Action pursuant to the regulations promulgated pursuant to the State Environmental Quality Review Act based on an Order on Consent between the Town and the New York State Department of Environmental Conservation; and

WHEREAS, at a meeting of said Town Board duly called and held on January 8, 2013, an Order was duly adopted by it and entered in the minutes specifying the said Town Board would meet to consider the increase and improvement of facilities of the Bloomingdale Sewer District in said Town at a maximum estimated cost of \$4,805,670.90, and to hear all persons interested in the subject thereof concerning the same at the Town Hall, in Bloomingdale, New York, in said Town, on January 22, 2013, at 6:00 P.M., Prevailing Time; and

WHEREAS, said Order duly certified by the Town Clerk was duly published and posted as required by law; and

WHEREAS, a public hearing was duly held at the time and place set forth in said notice, at which all persons desiring to be heard were duly heard; NOW, THEREFORE, BE IT

ORDERED, by the Town Board of the Town of St. Armand, Essex County, New York, as follows:

Section 1. Upon the evidence given at the aforesaid public hearing, it is hereby found and determined that it is in the public interest to make the increase and improvement of the facilities of the Bloomingdale Sewer District, in the Town of St. Armand, Essex County, New York, being the acquisition of a parcel of land adjacent to the existing River Road pump station and construction thereon of a new pump station, together with reconstruction of the existing pump station, including, in each case, original furnishings, equipment, machinery, apparatus, appurtenances and incidental improvements and expenses in connection therewith, at a maximum estimated cost of \$4,805,670.90.

Section 2. This Order shall take effect immediately.

This Public Interest Order was duly seconded by Councilman Dakin.

The question of the adoption of the foregoing order was duly put to a vote on roll, which resulted as follows:

Supervisor, Charles Whitson, Jr	AYE
Samuel Grimone, Deputy Supervisor	AYE
Donald Amell, and Councilperson	AYE
Earl Dakin, Jr., Councilperson	AYE
Jennifer L. Fuller, Councilperson	AYE

_____ Dated January 31, 2013
Davina M. Thurston
Town Clerk

RESOLUTION 16 OF 2013 – BOND RESOLUTION FOR SEWER PROJECT

The following resolution was offered by Deputy Supervisor Grimone who moved its adoption:

BOND RESOLUTION DATED JANUARY 31, 2013.

A RESOLUTION AUTHORIZING THE ISSUANCE OF \$4,805,670.90 BONDS OF THE TOWN OF ST. ARMAND, ESSEX COUNTY, NEW YORK, TO PAY THE COST OF THE INCREASE AND IMPROVEMENT OF THE FACILITIES OF THE BLOOMINGDALE SEWER DISTRICT, IN THE TOWN OF ST. ARMAND, ESSEX COUNTY, NEW YORK

WHEREAS, the capital project hereinafter described has been determined to be a Type II Action pursuant to the regulations of the New York State Department of Environmental Conservation promulgated pursuant to the State Environmental Quality Review Act, the implementation of which as proposed, such regulations provide will not

result in a significant environmental effect, based upon an Order on Consent between the Town and the New York State Department of Environmental Conservation; and

WHEREAS, pursuant to the provisions heretofore duly had and taken in accordance with the provisions of Section 202-b of the Town Law, and more particularly an Order of even date herewith, the Town Board has determined it to be in the public interest to improve the facilities of the Bloomingdale Sewer District in the Town of St. Armand, Essex County, New York, at a maximum estimated cost of \$4,805,670.90; NOW, THEREFORE, BE IT

RESOLVED, by the Town Board of the Town of St. Armand, Essex County, New York, as follows:

Section 1. For the specific object or purpose of paying the cost of the increase and improvement of the Bloomingdale Sewer District, in the Town of St. Armand, Essex County, New York, (the "Sewer District"), being the acquisition of a parcel of land adjacent to the existing River Road pump station and construction thereon of a new pump station, together with reconstruction of the existing pump station, including, in each case, original furnishings, equipment, machinery, apparatus, appurtenances and incidental improvements and expenses in connection therewith, at a maximum estimated cost of \$4,805,670.90, which specific object or purpose is hereby authorized at said maximum estimated cost, there are hereby authorized to be issued not to exceed \$4,805,670.90 bonds of said Town pursuant to the provisions of the Local Finance Law.

Section 2. It is hereby determined that the plan for the financing thereof is by the issuance of the \$4,805,670.90 serial bonds of said Town authorized to be issued pursuant to this bond resolution; provided, however, that the amount of bonds ultimately to be issued shall be reduced by any State and/or Federal grants in aid received therefore.

Section 3. It is hereby determined that the period of probable usefulness of the aforesaid specific object or purpose is forty years pursuant to subdivision 4 of paragraph a of Section 11.00 of the Local Finance Law. It is hereby further determined that the maximum maturity of the serial bonds herein authorized will exceed five years.

Section 4. The faith and credit of said Town of St. Armand, Essex County, New York, are hereby irrevocably pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year. To the extent not paid from monies raised in said Bloomingdale Sewer District from benefitted properties therein in the manner provided by law, there shall annually be levied on all the taxable real property of said Town, a tax sufficient to pay the principal of and interest on such bonds as the same become due and payable.

Section 5. Subject to the provisions of the Local Finance Law, the power to authorize the issuance of and to sell bond anticipation notes in anticipation of the issuance and sale of the serial bonds herein authorized, including renewals of such notes is hereby delegated to the Supervisor, the chief fiscal officer. Such notes shall be of such terms, form and contents, and shall be sold in such manner, as may be prescribed by said Supervisor, consistent with the provisions of the Local Finance Law.

Section 6. The powers and duties of advertising such bonds for sale, conducting the sale and awarding the bonds, are hereby delegated to the Supervisor, who shall advertise such bonds for sale, conduct the sale, and award the bonds in such manner as he shall deem best for the interests of said Town, including, but not limited to, the power to sell said bonds to the New York State Environmental Facilities Corporation; provided, however, that in the exercise of these delegated powers, the Supervisor shall comply fully with the provisions of the Local Finance Law and any order or rule of the State Comptroller applicable to the sale of municipal bonds. The receipt of the Supervisor shall be a full acquittance to the purchaser of such bonds, who shall not be obliged to see to the application of the purchase money.

Section 7. All other matters except as provided herein relating to the serial bonds herein authorized including the date, denominations, maturities and interest payment dates, within the limitations prescribed herein and the manner of execution of the same, including the consolidation with other issues, and also the ability to issue serial bonds with substantially level or declining annual debt service, shall be determined by the

Supervisor, the chief fiscal officer of such Town. Such bonds shall contain substantially the recital of validity clause provided for in Section 52.00 of the Local Finance Law, and shall otherwise be in such form and contain such recitals, in addition to those required by Section 51.00 of the Local Finance Law, as the Supervisor shall determine consistent with the provisions of the Local Finance Law.

Section 8. The Supervisor is hereby further authorized, at his sole discretion, to execute a project finance and/or loan agreement, and any other agreements with the New York State Department of Environmental Conservation and/or the New York State Environmental Facilities Corporation, including amendments thereto, and including any instruments (or amendments thereto) in the effectuation thereof, in order to effect the financing or refinancing of the specific object or purpose described in Section 1 hereof, or a portion thereof, by a bond, and/or note issue of said Town in the event of the sale of same to the New York State Environmental Facilities Corporation.

Section 9. The power to issue and sell notes to the New York State Environmental Facilities Corporation pursuant to Section 169.00 of the Local Finance Law is hereby delegated to the Supervisor. Such notes shall be of such terms, form and contents as may be prescribed by said Supervisor consistent with the provisions of the Local Finance Law.

Section 10. The validity of such bonds and bond anticipation notes may be contested only if:

- 1) Such obligations are authorized for an object or purpose for which said Town is not authorized to expend money, or
- 2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with, An action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or
- 3) Such obligations are authorized in violation of the provisions of the Constitution.

Section 11. This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section 1.150-2. Other than as specified in this resolution, no monies are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the object or purpose described herein.

Section 12. This resolution, which takes effect immediately, shall be published in summary form in the official newspaper, together with a notice of the Town Clerk in substantiating the form provided in Section 81.00 of the Local Finance Law.

This Resolution was duly seconded by Councilperson Fuller.

The question of the adoption of the foregoing order was duly put to a vote on roll, which resulted as follows:

Supervisor, Charles Whitson, Jr	AYE
Samuel Grimone, Deputy Supervisor	AYE
Donald Amell, Councilperson	AYE
Earl Dakin, Jr., Councilperson	AYE
Jennifer L. Fuller, Councilperson	AYE

_____ Dated January 31, 2013
Davina M. Thurston
Town Clerk

QUESTIONS AND CONCERNS FROM GUESTS

Supervisor Whitson opened the floor to guests with questions for Todd Hogson, AES Engineer.

Sandy Hayes: What happens if this project exceeds \$4,805,670.90 – it states in the resolution that is the maximum estimated cost, if it goes ten cents over than this is not approved?

Todd Hogson: That is part of managing the construction and design of the project, we are estimating the cost will be significantly less than the \$4,805,670.90. There are ways to amend the bond, but it is difficult to do, that is why we have estimated higher than the expected cost. Doug Goodfriend would have to answer how a bond resolution can be amended.

Sandy: I would think if I was a Board member, I would want to know that. You have just passed a resolution that states you're going to shut it off at that dollar amount and Todd doesn't know how that can happen. You need legal council to advise you.

Deputy Supervisor Sam Grimone: Our plan, Sandy, is that it will not reach that amount. Our plans are that it will be less than that. Some of the work we can have done by our crews, we are working with that and we plan on the amount being significantly less than the estimated amount.

Sandy: Well, that's a good plan, but this isn't even going to happen until 2014.

Sam: Yes, but that is part of our plan. We are planning on the amounts for 2014 to 2015 at those maximum costs. This has been raised twice. The plan is that it will come in less than maximum costs.

Sandy: So, what I want to know is if the plan doesn't work what happens? If I sell a piece of property, to you for \$250,000.00 and the contract says \$250,000.00, and an appraisal comes in short and you need \$275,000 to make the deal work, then the deal is off.

Sam: But if you have a contract that says it will cost no more than \$275,000.00 and it comes in at \$225,000.00 or \$250,000.00 then we are ok, right?

Sandy: Correct.

Sam: That is what we are doing. We are planning well for this.

Sandy: I just hope you have the right numbers. Look what happened with the Garage Project. I have a bad feeling about the economy and cost. You are locked in to this number.

Sam: The cost has been raised twice, Sandy, through planning our hope is that it will be significantly less than that. That is worst case scenario.

Todd: The project also has alternates built into it just in case there is a significant problem, it seldom has to go that way, but that is one way the Town can help to control the costs. still accomplishing the same thing. The goal is addressing DEC's concerns, and the Town's best long term interests. That has been built into the program, and can be modified with the State. Great pains go into controlling these costs for construction. There are no guarantees with the economy, but that is why some of those things have been built in to control the costs.

Sandy: Isn't that exactly what happened when the plant was built? They had financial troubles and cut a lot of corners and we ended up with an inferior product.

Todd: Yes, and they did it in designing and planning. They took whatever package was given them by Rural Development. As far as those consultants and what-not that were involved at the time, no other grant applications were made other than Rural Development. In fact going back a few years with what financing was done with Rural Development, it actually started out as an EFC project and something happened where the time ran out, and EFC let that project go. So there is history before us. If you miss a step that is what happened before. That was during the construction grant phase and from what I understand of that era, Saranac Lake and Lake Placid, back in 1970's. Those projects were funding with 85% grant.

Sandy: Well, I am certainly not against the project and I just hope we have the right numbers. The other concern that I have is if it turns out that the number of users cannot pay for this project, their shall annually be levied on all taxable real property of this Town a tax sufficient to pay the principle and interest of the bonds as they become due and payable. I am not too interested in paying for a sewage treatment plant that I am not a part of, and I wouldn't think Rockledge would be or Jimmy Dakin would be. I don't like that one bit. I don't care what it costs, if I am not on it, I am not paying for it.

You've got more people outside the Town that are being committed to pay for this than you've got there using it. And that I just can't go for that one bit.

Sam: You're never going to get that clause out of the contract, Sandy, because that is a protective clause and it's going to be in there, no matter who you go to for a bond, they want protection. It's like going to a bank; you can't tell me that everything you sign for, you're happy about signing for, for deals. There are things in there that are protecting the banks, and for no other reason. That's what it is there for, for no other reason. That is a clause that is there to protect the bond.

Sandy: I just can't buy it. That is like saying if I can't pay for my mortgage, my neighbors have to pay, and I am a neighbor to the sewage treatment plant.

Sam: That is not a good analogy. It is going to be there. The Town is putting their name on the line for this bond, and the Town is liable. What it is saying is, if your sewage people can't pay for it, the Town's going to pay for it. It is not a good analogy to say if you don't pay for your house; your neighbors are going to pay for it.

Sandy: If you go to get a mortgage, you have to prove that you can pay for it. The sewer users should prove that they have the ability or they shouldn't get the plant. The Town of St. Armand shouldn't have to pay for the few people that are using it. I realize it's a hardship on them, but the majority of us in this room don't use that sewer.

Sam: But the Town is putting their head in the noose for the bond. The Town is going to be liable. It's exactly that.

Charlie: There are such things right now, Sandy, that are in the works where there is a group from the county, free of charge, that comes in here and knock on doors and asks questions from every person in the sewer district pertaining to income and usage so that these numbers that Sam is referring to so that these numbers can be worked with by all parties concerned. So we know if the people within the sewer district can afford that, but these are steps that we have to take, one right after the other, to be ready.

Sandy: You should have taken that step before we agreed to commit to the bond.

Charlie: You can't do it. That step would not be done until we take agreement of the bond.

Sam: We already did this. We know that this project cannot be paid for by the sewage users, at the full price. That is why we got the grant funding. So, no matter what you do, that clause is still going to be there. That is a protection clause. The bonding agent is going to have that clause be there. It always is when a Town gets a bond.

Sandy: I just can't believe it, and I can't accept being committed to paying the bill for the sewer plant. You have already approved it, but there are two major questions, and I hope that is what Davina is writing or recording, because I want it on record that if this thing blows up in 2014 or 2015, I want it on record that I questioned that. You looked at the projections when it was a million bucks less, and looked like worse-case scenario; it was going to cost each person, each home, almost \$1000.00, per year, which is tough. I appreciate that. I appreciate that we need the sewer plant. I am not against the sewer plant, but I am against paying for it if I am not using it. I don't pay for anybody else's stuff if I'm not using it, and I can't accept it just because a bonding company says that. If I can't get financing someplace for a house, I go to a different bank. I think it's just too easy to say, well – that's the way they are all going to be.

Sam: Well it is. It is. Have you ever seen one, Todd, where the Town could say, no it's too expensive, we are not going to pay you?

Todd: No. I am not an attorney, so I can't answer the question specifically, but it's already been said that the Town is on the hook for the bond. I have never seen that clause not be on a bond. I have not ever seen a project get to the point where the bill is back on the Town, though, because the users are those who are supporting the system. I think that the resolution language has to include that, for whatever reason.

Sandy: How many people do you think would be in this room tonight if you told everybody in this Town that they are going to pay for the sewer plant whether they use it or not?

Sam: We are not saying that, Sandy. That is not in there. It says the Town cannot default and use that as a means to default, that the users can't pay for it. The Town is responsible. You cannot use as an excuse, it's too expensive for our users. That is not an excuse. You've got to pay back the money.

Further discussion ensued regarding the users paying for the sewer plant vs. other non-using residents, and language on the bond resolution. The life of the plant and term of the bond was also discussed.

A motion to adjourn the meeting was made by Deputy Supervisor Grimone, and seconded by Councilperson Fuller. All agreed. Motion carried. Meeting adjourned at 7:16 p.m.

I, Davina M. Thurston, Town Clerk for the Town of St. Armand, do hereby certify that the above is a true and correct transcript of the Board meeting minutes held on the above referenced date.

Davina M. Thurston
St. Armand Town Clerk