

February 6, 2019
Alexander Town Board Special Meeting
Alexander Town Hall 7:00 PM

Present: Supervisor Joseph Higley
Town Board: David Miller, Carol Wolfley, Eric Wagner
Town Clerk: Lisa L. Lyons
Absent: Roy Haller III
Guests: David DiMatteo, Brandon Snyder

Supervisor Higley called the meeting to order at 7:00 p.m. with the Pledge of Allegiance and a moment of silence for our military serving around the world.

RES. NO. 9: FINAL ORDER ESTABLISHING TOWN OF ALEXANDER WATER DISTRICT NO. 5:

On motion by Supervisor Higley, seconded by Councilperson Wagner, and carried, the following:

WHEREAS, the Town Board of the Town of Alexander (herein called "Town Board" and "Town", respectively), in the County of Genesee, New York, has received a petition pursuant to Section 191 of the Town Law, for the establishment of the Town of Alexander Water District No. 5 in the Town (the "District"), which petition was signed by a number of owners within the District, and was greater than the percentage required by law; and

WHEREAS, a map, plan and report, dated June 23, 2017 was prepared by Mountain Engineering, PLLC, competent engineers duly licensed by the State of New York, for the establishment of the District; and

WHEREAS, such map, plan and report was filed on September 11, 2017 at the office of the Town Clerk, and was available for public inspection at said location; and

WHEREAS, said proposed improvements consist of a project to provide a safe and reliable potable water supply and fire protection in the proposed District; and

WHEREAS, the overall project will generally consist of the construction and installation of approximately 42,100 linear feet of 8-inch and 12-inch diameter PVC water main along various roads in the Town including, but not limited to, Broadway Road (Route 20), Gillate Road, Darien-Alexander Townline Road, Bowen Road, Old Buffalo Road (Route 238) and Attica Road, the installation of a booster pump station and a water storage tank, as well as other such improvements as more fully identified in (or contemplated by) such map, plan and report prepared in connection with such Project, together with all related right-of-way costs, site work and other ancillary work, including hydrants, valves, water services, appurtenances, apparatus, and other improvements and costs incidental thereto and in connection with the financing thereof (collectively, the "Project"); and

WHEREAS, the estimated maximum amount proposed to be expended for the Project is estimated to be \$4,940,000; and

WHEREAS, pursuant to the Order duly adopted on October 10, 2017, the Town Board determined to proceed with the proposed establishment of the District and adopted an Order reciting a description of the boundaries of the District, the improvements proposed, the maximum amount proposed to be expended for the construction of the Project in connection with the establishment of the District, the proposed method of financing to be employed, the fact that a map, plan and report describing the same is on file in the Town Clerk's office and is available for public inspection and specifying November 13, 2017, at 8:00 o'clock p.m. (Prevailing Time) or shortly thereafter, as the time when the Town Board would meet to consider the proposed establishment of the District and to hear all persons interested in the subject thereof concerning the same, and for such other action on the part of the Town Board in relation thereto, as may be required by law; and

WHEREAS, following publication and posting of certified copies of said Order pursuant to Article 12 of the Town Law and after a public hearing duly held by the Town Board at the time and place herein referred to, the Town Board, by resolution duly adopted on November 13, 2017, determined that the Petition to Request the Water District was signed and acknowledged or proved or authenticated, as required by law, and was otherwise sufficient, the notice of public hearing was published and posted as required by law and was otherwise sufficient, that all the property and property owners included within the proposed District were benefited thereby, that all the property and property owners benefited were included within the limits of the proposed District, that it was in the public interest to establish the District and approved the establishment of the District and the construction of the Project in connection with the District as hereinabove described at an estimated maximum cost of \$4,940,000; and

WHEREAS, permission of the State Comptroller was required with respect to the establishment of the District and the Town submitted an application to the Office of the State Comptroller, Department of Audit and Control, as required by Town Law; and

WHEREAS, the Office of the State Comptroller, Department of Audit and Control reviewed such application and on December 10, 2018, the State Comptroller issued an order that such application of the Town Board of the Town of Alexander for permission to establish the Town of Alexander Water District No. 5 was approved and permitted the establishment of the District in accordance with the description referred to in a resolution of November 13, 2017, at an estimated maximum cost of \$4,940,000;

NOW, THEREFORE, be it

ORDERED, that the establishment of the District is hereby approved and will be known as the Town of Alexander Water District No. 5, situate wholly outside of any incorporated village or city, and is bounded and described as follows:

The boundary of the Town of Alexander Proposed Water District No. 5 includes all that tract or parcel of land situated in the Town of Alexander, County of Genesee, State of New York, being described as follows:

Beginning at a point which is the southwesterly corner of the Town of Alexander municipal boundary and Tax Parcel number 10-1-68.12, more or less; thence,

1. Northerly, along the Westerly Alexander Municipal Boundary, to the northwesterly corner of the Alexander/Darien municipal boundary a distance of 15,883 feet, more or less; thence,

2. Easterly, along the Alexander/Batavia municipal boundary, to the northeasterly corner of Tax Parcel number 7-1-6.1 a distance of 3,008 feet, more or less; thence,
3. Southerly, along the easterly line of Tax Parcel number 7-1-6.1 to northwesterly corner of Tax Parcel number 7-1-8, a distance of 323 feet, more or less; thence,
4. Easterly, along the northerly property line of Tax Parcel number 7-1-8, to the northeasterly property corner a distance of 1331 feet, more or less; thence,
5. Northerly, along the westerly property line of Tax Parcel number 7-1-9.121 to the northwesterly property corner, a distance of 330 feet, more or less; thence,
6. Easterly, along the northerly property line of Tax Parcel number 7-1-9.121 to the northeasterly property corner, a distance of 910 feet, more or less; thence,
7. Southerly, along the easterly property lines of Tax Parcel numbers 7-1-9.121 and 7-1-9.112 to the southeasterly property corner of Tax Parcel number 7-1-9.112, a distance of 3,539 feet, more or less; thence,
8. Easterly, across Tax Parcel number 7-1-11.111 to the southwest corner of Tax Parcel number 7-1-11.2 and intersection point, a distance of 1,508 feet, more or less; thence,
9. Northerly, along the westerly property lines of Tax Parcel numbers 7-1-11.2, 7-1-13 and 7-1-12 to the northwest corner, a distance of 377 feet, more or less; thence,
10. Easterly, along the northerly property line of Tax Parcel number 7-1-12 to the right of way of Gillate Road, across Gillate Road 49.5' wide to the intersection of Tax Parcel number 7-1-15.11, across Tax Parcel number 7-1-15.11 to the intersection of Tax Parcel number 7-1-16.1 on easterly property line of Tax Parcel number 7-1-15.11, a distance of 1,576 feet, more or less; thence,
11. Northerly, along the westerly property line of Tax Parcel number 7-1-16.1 to northwesterly property line, a distance of 3,087 feet, more or less; thence,
12. Easterly, along the northerly property line of Tax Parcel number 7-1-16.1, to the intersection of the northeasterly property corner, a distance of 917 feet, more or less; thence,
13. Southerly along the easterly property line of Tax Parcel number 7-1-16.1 to an angle point on the Village of Alexander municipal boundary, a distance of 3,579 feet, more or less; thence,
14. Westerly along the property line of Tax Parcel numbers 7-1-16.1 to an angle point, along the Village of Alexander municipal boundary, a distance of 533 feet, more or less; thence,
15. Southerly along the westerly Village of Alexander municipal boundary and easterly property line of Tax Parcel number 7-1-16.1 across Broadway Road (US Route 20) 66' wide right of way, continuing to the northwesterly corner of Tax Parcel number 7-1-18.2 and along its easterly line to an angle point, a distance of 1,050 feet, more or less; thence,
16. Easterly through the lands of Tax Parcel numbers of 7-1-18.2 and 7-1-18.12 and along the Village of Alexander municipal boundary to a point on the easterly line of Tax Parcel number 7-1-18.12, a distance of 1,468 feet, more or less; thence,
17. Southerly along the easterly property line of Tax Parcel number of 7-1-18.12 to the southeasterly corner, a distance of 1,467 feet, more or less; thence,
18. Westerly along the southerly property line of Tax Parcel number of 7-1-18.12 to the northeasterly corner of 7-1-20.1, a distance of 519 feet, more or less; thence,
19. Southerly along the easterly property line of Tax Parcel number of 7-1-20.1 to the southeasterly corner, a distance of 301 feet, more or less; thence,
20. Westerly along the southerly property line of Tax Parcel number of 7-1-20.1 and the existing water district No. 1 to the southwest corner of Tax Parcel number 7-1-20.1, a distance of 2,638 feet, more or less; thence,
21. Southerly along the easterly property lines of Tax Parcel numbers 7-1-23.11, 10-1-12 and 10-1-14.1 and the existing water district No. 1 to a point along the easterly property line of Tax Parcel number 10-1-14.1 and the existing water district No. 1, a distance of 6,286 feet, more or less; thence,
22. Westerly along the property line of Tax Parcel number 10-1-14.1 and the existing water district No. 1 to a property corner of Tax Parcel number 10-1-14.1 and a point on the existing water district No. 1, a distance of 684 feet, more or less; thence,
23. Southerly along the property line of Tax Parcel number 10-1-14.1 and the existing water district No. 1 to the southeasterly property corner of Tax Parcel number 10-1-14.1 and point on the existing water district No. 1, a distance of 2,067 feet, more or less; thence,
24. Westerly along the southerly property line of Tax Parcel number 10-1-14.1 and the existing water district No. 1 to the northeasterly corner of Tax Parcel number 10-1-28 and point on the existing water district No. 1, a distance of 1,512 feet, more or less; thence,
25. Southerly along the easterly property line of Tax Parcel number 10-1-28 and existing water district No. 1 to an angle point along these lines, a distance of 673 feet, more or less; thence,
26. Westerly along the property line of Tax Parcel number 10-1-28 and existing water district No. 1 to a property corner of Tax Parcel number 10-1-28 and point of the existing water district No. 1, a distance of 43 feet, more or less; thence,
27. Southerly along the easterly property lines of Tax Parcel numbers 10-1-88 and 10-1-26 and existing water district No. 1 to the Town of Alexander municipal boundary and southeasterly corner of the existing water district No. 1, a distance of 689 feet, more or less; thence,
28. Westerly along the Town of Darien municipal boundary, a distance of 4,960 feet, more or less, to the point of beginning.

and be it further:

ORDERED, that the District hereinabove referred to shall be constructed as set forth in the Order Calling the Public Hearing and the resolution establishing the District, at an estimated maximum cost of \$4,940,000 and that the plan of financing is the issuance of serial bonds in an aggregate principal amount not to exceed \$4,940,000 such amount to be offset by any federal, state, county and/or local funds received including, but not limited to, grant funds in an approximate amount of \$2,200,000 anticipated to be received from the United States of America – Rural Development Agency, and unless paid from other sources or charges, the costs for the

establishment of the District will be by the assessment, levy and collection of special assessments from the several lots and parcels of land within the District, which the Town Board shall determine to be especially benefited by said District, so much upon and from each as shall be in just proportion to the amount of benefit which the District shall confer upon the same, to pay the principal of and interest on said bonds as the same shall become due and payable, except as provided by law; and be it further

ORDERED, that within ten days after adoption of this Order, the Town Clerk shall record with the Clerk of the County of Genesee and file with the Department of Audit and Control/Division of Legal Services in Albany, New York copies of this Order, certified by the Town Clerk

4 – Yes Higley, Miller, Wolfley, Wagner 0 – No

RES. NO. 10: BOND RESOLUTION FOR WATER DISTRICT NO. 5:

On motion by Councilperson Wolfley, seconded by Councilperson Wagner, and carried, the following:

A BOND RESOLUTION, DATED FEBRUARY 6, 2019, OF THE TOWN BOARD OF THE TOWN OF ALEXANDER, GENESEE COUNTY, NEW YORK (THE “TOWN”), AUTHORIZING A CAPITAL IMPROVEMENTS PROJECT WITHIN THE TOWN OF ALEXANDER WATER DISTRICT NO. 5 IN THE TOWN AND THE CONSTRUCTION OF IMPROVEMENTS THEREIN, AT AN ESTIMATED MAXIMUM COST OF \$4,940,000 AND AUTHORIZING THE ISSUANCE OF SERIAL BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,940,000 OFFSET BY ANY FEDERAL, STATE, COUNTY AND/OR LOCAL FUNDS RECEIVED BY THE TOWN, PURSUANT TO THE LOCAL FINANCE LAW TO FINANCE SAID PURPOSE AND DELEGATING THE POWER TO ISSUE BOND ANTICIPATION NOTES IN ANTICIPATION OF THE SALE OF SUCH BONDS TO THE TOWN SUPERVISOR.

WHEREAS, the Town Board of the Town of Alexander, Genesee County, New York (the “Town”), pursuant to Article 12 of the Town Law, created a water district designated and known as the Town of Alexander Water District No. 5 (the “District”); and

WHEREAS, the Town Board has determined to undertake a water system capital improvements project (the “Project”) generally consisting of the construction of the infrastructure for the District; and

WHEREAS, by Resolutions the Town Board took the following actions with respect to the Project: (a) prepared maps, plans and reports and identified the boundaries for the District and the Project, (b) held public hearings with respect to the Project, (c) determined that the Project would not have a significant adverse effect on the environment under Article 8 of the Environmental Conservation Law, (d) determined that the requirements of Article 12 of the Town Law had been satisfied with respect to the Project and further determined to undertake the Project and (e) received permission to establish the District from the New York State Comptroller; and

WHEREAS, the Town Board desires to issue obligations of the Town to finance the costs of the Project;

NOW, THEREFORE, be it

RESOLVED, by the Town Board (by the favorable vote of not less than two-thirds of all the members of the Board) as follows:

SECTION 1: The Town is hereby authorized to undertake a certain capital improvements project generally consisting of the construction and installation of approximately 42,100 linear feet of 8-inch and 12-inch diameter PVC water main along various roads in the Town including, but not limited to, Broadway Road (Route 20), Gillate Road, Darien-Alexander Townline Road, Bowen Road, Old Buffalo Road (Route 238) and Attica Road, the installation of a booster pump station and a water storage tank, as well as other such improvements as more fully identified in (or contemplated by) such map, plan and report prepared in connection with such Project, together with all related right-of-way costs, site work and other ancillary work, including hydrants, valves, water services, appurtenances, apparatus, and other improvements and costs incidental thereto and in connection with the financing thereof (collectively, the “Purpose”). The estimated maximum cost of said purpose is \$4,940,000.

SECTION 2: The Town Board plans to finance the estimated maximum cost of said purpose by the issuance of serial bonds in an aggregate principal amount not to exceed \$4,940,000 said amount to be offset by the receipt of any federal, state, county and/or local funds received including, but not limited to, the application of approximately \$2,200,000 of grant funds anticipated to be received from the United States of America – Rural Development Agency. Unless paid from other sources or charges, the costs for the establishment of the District will be by the assessment, levy and collection of special assessments from the several lots and parcels of land within the District, which the Town Board shall determine to be especially benefited by said District, so much upon and from each as shall be in just proportion to the amount of benefit which the District shall confer upon the same, to pay the principal of and interest on said bonds as the same shall become due and payable, except as provided by law.

SECTION 3: It is hereby determined that said purpose is an object or purpose described in subdivision 1 of paragraph (a) of Section 11.00 of the Local Finance Law, and that the period of probable usefulness of said purpose is 40 years.

SECTION 4: Current funds are not required to be provided prior to the issuance of the bonds authorized by this resolution or any notes issued in anticipation of the sale of said bonds.

SECTION 5: It is hereby determined the proposed maturity of the obligations authorized by this resolution will be in excess of five years.

SECTION 6: The faith and credit of the Town are hereby irrevocably pledged for the payment of the principal of and interest on such bonds (and any bond anticipation notes issued in anticipation of the sale of 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 or notes becoming due and payable in such year. Unless paid from other sources or charges, the costs of said establishment of the District shall be paid by the assessment, levy and collection of special assessments from the several lots and parcels of land within the District which the Town Board shall determine and specify to be especially benefited thereby, so much upon and from each as shall be in just proportion to the amount of benefit conferred upon the same, to pay the principal of and interest on such bonds or notes as the same shall become due and payable, except as provided by law. Should the assessments upon benefited real property be insufficient to pay the principal of and interest on such bonds, 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 or notes as the same become due and payable.

SECTION 7: Subject to the provisions of this resolution and of the Local Finance Law, and pursuant to the provisions of Section 21.00 relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and of Section 50.00, Sections 56.00 to 60.00, Section 62.00, Section 62.10, Section 63.00, and Section 164.00 of the Local Finance Law, the powers and duties of the Town Board pertaining or incidental to the sale and issuance of the obligations herein authorized, including but not limited to authorizing bond anticipation notes and prescribing the terms, form and contents and details as to the sale and issuance of the bonds herein authorized and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said notes, are hereby delegated to the Town Supervisor, the chief fiscal officer of the Town. Without in any way limiting the scope of the foregoing delegation of powers, the Town Supervisor, to the extent permitted by Section 58.00(f) of the Local Finance Law, is specifically authorized to accept bids submitted in electronic format for any bonds or notes of the Town.

SECTION 8: The temporary use of available funds of the Town, not immediately required for the purpose or purposes for which the same were borrowed, raised or otherwise created, is hereby authorized pursuant to Section 165.10 of the Local Finance Law, for the purpose or purposes described in Section 1 of this resolution. The Town then reasonably expects to reimburse any such expenditures (to the extent made after the date hereof or within 60 days prior to the earlier of (a) the date hereof or (b) the date of any earlier expression by the Town of its intent to reimburse such expenditures) with the proceeds of the bonds authorized by Section 2 of this resolution (or with the proceeds of any bond anticipation notes issued in anticipation of the sale of such bonds). This resolution shall constitute the declaration (or reaffirmation) of the Town's "official intent" to reimburse the expenditures authorized by Section 2 hereof with such bond or note proceeds, as required by United States Treasury Regulations Section 1.150-2.

SECTION 9: The Town Supervisor is further authorized to take such actions and execute such documents as may be necessary to ensure the continued status of the interest on the bonds authorized by this resolution, and any notes issued in anticipation thereof, as excludable from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code") and may designate the bonds authorized by this resolution, and any notes issued in anticipation thereof, as "qualified tax-exempt bonds" in accordance with Section 265(b)(3) of the Code.

SECTION 10: The Town Supervisor is further authorized to enter into a continuing disclosure agreement with the initial purchaser of the bonds or notes authorized by this resolution, containing provisions which are satisfactory to such purchaser in compliance with the provisions of Rule 15c2-12, promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

SECTION 11: The Town has complied with applicable federal, state and local laws and regulations regarding environmental matters, including compliance with the New York State Environmental Quality Review Act ("SEQRA"), comprising Article 8 of the Environmental Conservation Law and, in connection therewith, duly issued a negative declaration and/or other applicable documentation, and therefore, no further action under SEQRA is necessary.

SECTION 12: In the absence or unavailability of the Town Supervisor, the Deputy Town Supervisor is hereby specifically authorized to exercise the powers delegated to the Town Supervisor in this resolution.

SECTION 13: The validity of said serial bonds or of any bond anticipation notes issued in anticipation of the sale of said serial bonds may be contested only if:

(1) (a) such obligations are authorized for an object or purpose for which the Town is not authorized to expend money, or

(b) the provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with, and

an action, suit or proceeding contesting such validity is commenced within 20 days after the date of such publication; or

(2) such obligations are authorized in violation of the provisions of the Constitution of New York.

SECTION 14: The Town Clerk is hereby authorized and directed to publish this resolution, or a summary thereof, together with a notice in substantially the form provided by Section 81.00 of said Local Finance Law, in a newspaper having a general circulation in the Town and hereby designated as the official newspaper of the Town for such publication.

SECTION 15: This resolution is effective immediately.

4 – Yes Higley, Miller, Wolfley, Wagner 0 – No Carried

On motion by Councilperson Miller, seconded by councilperson Wolfley, the meeting adjourned at 7:58 p.m.

Respectively submitted,

Lisa L. Lyons

Town Clerk