



The Town of Franklin

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Town of Franklin Board Meetings

Special Board Meeting September 29, 2008 - 7:00 pm

The Town of Franklin Town Board held its regular, monthly Town Board Meeting on Monday, September 15, 2008 at 7:00 pm at the Franklin Town Hall in Vermontville, NY.

Board members present:

Supervisor Mary Ellen Keith
Councilman Allen Berg
Councilman Walt Kretser
Councilman Clifford Smalley
Councilwoman Janet Ordway

Others Present:

Highway Superintendent Wade Sullivan, Town Clerk Sandra Oliver, Janine Taylor, Jean Baltzly, Tammy Sullivan, Cur & Karen Potts, Frank & Barbara Karl, Jim & Nancy Haubert, Karen Smalley, Al Nassan, Dan Reilly, HomEnergy Services

CALL TO ORDER

Supervisor Keith called the meeting to order at 7:00pm; the Pledge of Allegiance was recited, and the Town Clerk called the roll, stating the full board was present.

MOMENT OF SILENC

Supervisor Keith requested all present remain standing to acknowledge recent losses, including her brother, John Goff, the tragic death of Daniel Hamm and Ruth Collins, former Town tax collector.

2008-09 ROAD SAND AND SALT.

1. **OPEN SAND BIDS.** In response to the published request for prices, one bid was received from Trudeau Sand and Gravel, Saranac Lake, NY, for 13,000 tons of screened road sand:

Delivered: \$8.00 per ton
 Picked up \$5.25 per ton

The Board discussed the economics of having the sand delivered or having Town vehicles pick it up. Highway Supt. Sullivan calculated if delivered, 2 Highway Dept. employees would be dedicated to receiving the sand whereas 6 employees would be required to pick up the sand. In man-hours, wear and tear on vehicles and the possibility of accidents for the 813 trips, it would not be economical for the Town to pick the sand up. Supt. Sullivan will utilize those 6 employees on road work and brush clearing.

Coun. Smalley indicated he would like to revisit the subject of picking up road sand next year and perhaps advertising for bids earlier than September. Coun. Berg said too much sand had been applied to the roads last winter; Supt. Sullivan agreed and stated he would do his best to limit the amount of sand and salt this year. He emphasized, however, that the severity of weather is the determining factor.

Motion for resolution (W.Kretser-J.Ordway m/s/p) ALL AYE

RESOLUTION NO. 57: ACCEPT BID OF TRUDEAU SAND AND GRAVEL FOR 2008-09 ROAD SAND

WHEREAS, the Town published request for price for 13,000 tons of road sand; and WHEREAS, Trudeau Sand and Gravel, Inc. ("Trudeau"), Saranac Lake, was the only bidder; NOW, THEREFORE,

BE IT RESOLVED, that the Town of Franklin Town Board hereby accepts the bid of Trudeau for 13,000 tons of screened road sand, delivered (with a minimum of four (4) trucks per day, 7:00 am to 4:00 pm), at \$8.00 per ton.

THOSE VOTING AYE:

Supervisor Mary Ellen Keith
 Councilperson Janet Ordway
 Councilman Walter Kretser
 Councilman Allen Berg
 Councilman Clifford Smalley

THOSE VOTING NAY:

none

Coun. Berg noted commented that in years past, the Town only sanded intersections and inclines and asked whether the Highway Dept. would consider reinstating the practice. Supt. Sullivan replied the public is used to traveling on well-sanded and salted thoroughfares. If the public would reduce their speed of travel, the amount of sand and salt used could be lowered.

Coun. Berg asked how much salt was ordered through the County, and Supt. Sullivan replied he asked for 9,000 tons, but will receive only 7,000 tons. Depending on the weather, Supt. Sullivan indicated it would be adequate.

2. **OPEN FUEL BIDS.** Home Energy Services, Saranac Lake, submitted its bid at 6:45 pm. The Board agreed to hear the terms of the bid proposal, as follows:

Diesel: \$.30 per gallon over Home Energy cost
 Gasoline \$.30 per gallon over cost
 Fuel oil \$.30 per gallon over cost
 Propane \$.30 per gallon over cost

The Board asked Mr. Reilly whether his firm could meet delivery demands for the Town's four locations, and he responded affirmatively.

Supervisor Keith said in 2006, Agway with whom the Town had contracted with, went out of business, and the Town Garage was out of fuel. She made several calls to suppliers, and Griffith Energy responded by promptly delivering. The Town had received no bids in response to its published requests for bids in 2006, so the Board authorized her to continue with Griffith Energy. She had spoken with a representative of Griffith Energy and was informed Griffith's understanding with the Town continued until December 31, 2009.

The Board will review the pricing received from Griffith Energy and the bid from HomEnergy. The matter was tabled, to be addressed at a future Board meeting.

HIGHWAY MATTERS

1. APPOINT DEPUTY HIGHWAY SUPERINTENDENT. Coun. Kretser stated Highway Supt. Sullivan failed to appoint a deputy highway superintendent within the stipulated five days following Michael Canty's resignation from the position. Under the law, the Town Board is obliged to fill the vacancy, and appointed deputy highway superintendents must meet the same residency requirements as elected highway superintendents. No qualified, acceptable resident employee of the Highway Dept. is available to fill the position. Therefore, the Board must adopt a resolution for a new local law eliminating the residency requirement for the position of deputy highway superintendent so as to open the position to a wider field of qualified candidates. Until the new local law goes into effect, and until December 31, 2008, Supt. Sullivan has agreed that if he is unavailable or out of town, he will designate an employee to manage the department until his return.

Motion for resolution (A.Berg-C.Smalley m/s/p) ALL AYE

RESOLUTION NO. 58: PROPOSED LOCAL LAW EXPANDING RESIDENCY REQUIREMENT FOR POSITION OF APPOINTED DEPUTY HIGHWAY SUPERINTENDENT

WHEREAS, _____

THOSE VOTING AYE:

Supervisor Mary Ellen Keith
Councilperson Janet Ordway
Councilman Walter Kretser
Councilman Allen Berg
Councilman Clifford Smalley

THOSE VOTING NAY:

none

CONTRACT WITH FRANKLIN COUNTY FOR 2008-09 SNOW AND ICE REMOVAL.

Supervisor Keith and Highway Superintendent Sullivan attended a meeting with town supervisors and highway superintendents in southern Franklin County and 3 representatives of the Franklin County Legislature in an effort to increase the amount of County reimbursement to southern towns for winter road maintenance. Franklin County reluctantly agreed to elevating all county roads in the southern end of the county to A+ status, thereby increasing reimbursement amount to the Town of Franklin to \$137,208.42. Supervisor Keith is waiting for the county to send a revised contract, and upon receipt and Town Board review and authorization, she will execute same.

OTHER BUSINESS

1. FIRE AND RESCUE SERVICE CONTRACTS.

- a. Contract with Bloomingdale Volunteer Fire Dept. This is due for renegotiation and renewal this year.
- b. Contract with Village of Saranac Lake for Rescue Service. Supv. Keith and Coun. Berg met with representatives of the Village of Saranac Lake regarding the rescue contract for 2009. The Village has demanded a 5 percent reduction from all its departments for the upcoming year; however, Supervisor Keith informed the Village it cannot expect participating municipalities to make up that 5 percent. The 2008 rescue contract stipulates the employment of a full-time EMT, which has not yet been accomplished, and contract funds have been paid to the Village. The Village must use the contract funds for that purpose. Supv. Keith and Coun. Berg will await the decision of the Village.

2. TAXPAYER PETITION DEMANDING REFERENDUM ON SUBDIVISIONS. September 15, 2008 meeting, a petition signed by 158 taxpayers was presented to the Board demanding a referendum. Supv. Keith contacted Attorney for the Town of Franklin James Maher, and he sent the following letter and legal opinions:

September 18, 2008
Town of Franklin
Mary Ellen Keith, Town Supervisor
P.O. Box 209, Vermontville, NY 12989

Re: Question concerning request for a referendum on subdivision regulations

Dear Mary Ellen:

You have asked for my opinion concerning a petition submitted to the Town Board which requests that a public vote be conducted on whether the Town should enact subdivision regulations.

There is no law that I know of that requires a referendum to be held before subdivision regulations may be enacted. The procedure for enacting such regulations is through a public hearing being held on a proposed local law that codifies the proposed regulations.

In New York State it is not legal for a town (or a village, city or county) to hold an advisory referendum. As stated by the New York State Comptroller in several opinions, including Opinions 88-79 and 91-58 (copies of which are enclosed),

It has been consistently held in this State that a municipality may not submit a question to a referendum, either advisory or binding, in the absence of express statutory authority. Based upon these cases, we have stated that referenda which are neither authorized nor required by statute are improper and without effect and that municipal monies may not be expended for such purposes.

Based on this authority, it is my opinion that the Town cannot conduct an advisory referendum on whether to enact subdivision regulations.

Please provide a copy of this letter, and of the enclosed Comptroller's opinions, to the individual board members and let me know if you or they have further questions.

Yours very truly,
James E. Maher

Encl.

cc: Town Board members

OPINIONS OF THE OFFICE OF THE STATE COMPTROLLER**OPINION NO. 91-58**

Referendum - Advisory (site plan approval)

General City Law, §30-a: In the absence of express statutory authority, a city may not submit a question to a referendum, either advisory or binding, in the absence of express statutory authority (*McCabe v. Voorhis*, 243 NY 401; *Mills v. Sweeney*, 219 NY 213; *Kupferman v. Katz*, 19 AD2d 824, 243 NYS2d 773, affd 13 NY2d 932, 244 NYS2d 217; *Greene v. Town Board of Town of Warrensburg*, 90 AD2d 916, 456 NYS2d 873, lv den 58 NY2d 604, 459 NYS2d 1027; *Citizens For An Orderly Energy Policy v. County of Suffolk*, 90 AD2d 522, 455 NYS2d 32, appeal dsmd 57 NY2d 1045, 457 NYS2d 787). Based upon these cases, we have stated that referenda which are neither authorized nor required by statute are improper and without effect and that municipal moneys may not be expended for such purposes (1990 Opns St Comp No. 90-64, p 146; 1988 Opns St Comp No. 88-70, p 137; 198 Opns St Comp No. 87-80, p 120; 1986 Opns St Comp No. 86-8, p 14; 1981 Opns St Comp No. 81-344, p 376).

We are aware of no State statute which authorizes or requires an advisory referendum on the granting of site plan approval (cf., General City Law, §30-a[2], relative to public hearings on site plan approvals) or on local waterfront revitalization consistency determinations (see Executive Law, art 42, §910 et seq.; 19 NYCRR part 601).

Accordingly, it is our opinion that the city may not conduct an advisory referendum on these questions.

OPINION NO. 88-70

Referendum - Advisory (fluoridation of water)

General City Law §20(2), (7); General Municipal Law §6-c(8); Local Finance Law §34.00: In the absence of express statutory authority, a city may not conduct an advisory referendum on whether to fluoridate city water or whether to improve the city water or sewer systems. However, bond resolutions or expenditures from capital reserve funds in connection with the improvements may be subject to referendum in certain circumstances.

You ask whether a city may conduct a referendum to poll voters on issues such as whether to fluoridate city water or improve the city water or sewer system.

It has been consistently held in this State that a municipality may not submit a proposition to a referendum in absence of express statutory authority (*McCabe v. Voorhis*, 243 NY 401, 153 NE 849; *Mills v. Sweeney*, 219 NY 213, 114 NE 65; *Greene v. Town Board of Town of Warrensburg*, 90 AD2d 916, 456 NYS2d 873, mot for lv to app den 58 NY2d 604, 459 NYS2d 1027; *Meredith v. Connally*, 68 Misc 2d 956, 328 NYS2d 719, affd 38 AD2d 385, 330 NYS2d 188; *Silberman v. Katz*, 54 Misc 2d 956, 283 NYS2d 895, affd 28 AD2d 992, 284 NYS2d 836; *Adams v. Cuevas*, 133 Misc 2d 63, 506 NYS2d 614; *Meredith v. Monahan*, 60 Misc 2d 1081, 304 NYS2d 638). Based upon these cases, we have stated that referenda which are neither permitted nor required by statute are improper and without effect, and that municipal moneys may not be expended for such purposes (1987 Opns St Comp No. 87-80, pg 120; 1986 Opns St Comp No. 86-8, p 14; 1981 Opns St Comp No. 81-344, pg 376).

We are aware of no statute which authorizes or requires a city to conduct an advisory referendum on whether the city should undertake fluoridation of its water system, or water or sewer capital improvements (see 34 Opns St Comp, 1978, pg 192; General city Law, §20(2), (7), (11); cf., General city Law, §28[2][b], relative to referenda on sale or lease of city real property; Municipal Home Rule Law, §23 and 24, requiring mandatory or permissive referenda, respectively, for certain local laws). However, there may be referendum requirements in connection with financing these improvements if the funding for the improvements is derived from the proceeds of borrowing or capital reserve funds.

Under Local Finance Law §34.00, a city may adopt a local law requiring that, with two exceptions, all bond resolutions or those bond resolutions authorizing the issuance of bonds for such purposes or amounts as may be specified by local law shall be subject to mandatory or permissive referendum. A city may not require a referendum on bond resolutions authorizing the issuance of bonds to pay judgments or claims, or to provide sewage disposal or treatment facilities required by order of the State Departments of Health or Environmental Conservation (Local Finance Law §34.00(b)).

Also, under General Municipal Law, §6-c(8), an expenditure from a capital reserve fund established for a type of, as opposed to a specific, capital improvement is subject to permissive referendum requirements if it is required by law that an authorization to issue obligations for such improvements would be subject to referendum. Thus, the expenditure of moneys from a capital reserve fund for a type of improvement would be subject to permissive referendum if, pursuant to city local law, the issuance of obligations for the improvement would be subject to referendum.

Accordingly, the city may not conduct referenda to poll voters on whether to fluoridate city water, or to improve the city water or sewer system in the absence of State legislative authority. However, bond resolutions or expenditures from capital reserve funds in connection with the improvements may be subject to referendum in certain circumstances. We note that our reference to State legislation is not intended as a recommendation with regard to any such legislation."

The letter from Mr. Maher and Opinions of the State Comptroller specify that public funds cannot be expended for an advisory referendum. Therefore, the Town will continue to research and draft subdivision regulations through recommendations of the Citizens Advisory Committee on Subdivisions. Once a draft of the regulations is finalized, the Board will adopt a resolution enacting a local law, and a public hearing on same will be held.

Coun. Smalley advised that in research performed by the Committee, it was discovered that Adirondack Park Agency had no jurisdiction over 72 subdivisions in Town of Franklin over the past few years, thereby disproving the myth that APA looks after the interests of Town of Franklin residents.

The Town Clerk was requested to send a copy of Mr. Maher's letter and supporting opinions to the signors of the petition.

3. INFRASTRUCTURE MATTERS. Coun. Smalley stated the Board had postponed a decision on the infrastructure project to Sept. 29, 2008, and thought it advisable for the Board to determine whether to amend Resolution No. 48 (adopted Aug. 20, 2008), to split the Garage repair and renovation from the community center construction. At the beginning of September, a survey was sent to all Town taxpayers, and as of Sept. 29, 2008, the outcome tallied as follows:

NO to both Garage rehab and Kate Mtn Center	37
YES to both projects	18
YES to Garage renovation only	20
YES to the Kate Mtn construction only	2
RETURNED (forwarding address invalid; or Insufficient address)	18

Out of the 1,000 surveys mailed, 95 replies have been received.

Coun. Kretser acknowledged the Town's need to repair and renovate the Garage, as well as for a community center at some point in the future. Work on the Garage, however is urgent. Coun. Smalley stated in light of news that the federal government might well be borrowing \$700 billion to bail out the financial industry and inevitable federal income tax increase, the Town should lower its expectations. Coun. Kretser indicated that The Board concurred that the single infrastructure project involving two buildings should be divided into two separate projects.

Supv. Keith stated the Building Committee will be meeting with the architects and engineers on Thursday, October 2nd at 4:00 pm, and new cost estimates will be reviewed.

Jean Baltzly, member of the Building Committee for 10 years explained that bonding in an amount of \$1 million and over requires a permissive referendum. As the Garage project is anticipated to cost less than \$1 million, no referendum is required. She explained further that the residents of the Town should realize that by not going forward with the community center there will be no local place for fundraiser dinners, socials, or other community gatherings. The kitchen in the Town Hall will become a courtroom, and the appliances will be removed and sold.

Motion to amend Resolution No. 48 (C.Smalley-W.Kretser m/s/p) ALL AYE

RESOLUTION NO. 48: PROCEED WITH PLANS FOR INFRASTRUCTURE PROJECT

WHEREAS, the Town Board and its committees have studied and discussed its infrastructure (buildings) needs for several years; and

WHEREAS, the Board has determined the Town Garage renovation to be first priority; and

WHEREAS, because NYS Unified Court System has imposed specific guidelines for the physical space of the Town Justice Court which will be relocated to the current kitchen of the Franklin Town Hall; and

WHEREAS, the Franklin Town Hall will no longer contain a kitchen or adequate space to support community events, construction of a community center at Kate Mountain Recreation Park has been proposed; and

WHEREAS, Architects Brian Burke and Beverly Eichenlaub and Earth Science Engineering have submitted plans and drawings and price estimates encompassing the Garage renovation (\$688,000) and proposed community center (\$545,000) ; NOW, THEREFORE,

BE IT RESOLVED, that the Town Board will continue to pursue accomplishment of the infrastructure project as follows:

- (1) The repair and renovation of the Garage will be regarded as a separate project and a priority;
- (2) The proposed construction of a community center at Kate Mountain Recreation Park will be regarded as a separate project and will be indefinitely postponed;
- (3) Hold several public information sessions regarding the project, the first scheduled for Friday, September 12, 2008, at Kate Mountain Recreation Park from 4:00 to 8:00 PM.
- (4) Conduct a survey of all Town taxpayers to determine whether they would approve of such project (return stamped envelope to be included).
- (5) Research and pursue alternative financing through grants and donations

THOSE VOTING AYE:

Supervisor Mary Ellen Keith
 Councilperson Janet Ordway
 Councilman Walter Kretser
 Councilman Allen Berg
 Councilman Clifford Smalley

THOSE VOTING NAY:

none

4. ELECTIONS.

a. Voter registration will be held at the Town Hall on Tuesday, October 7th from 5:00 to 9:00 pm and Saturday October 11th from 2:00 to 9:00 pm.

b. Polling Site. Supv. Keith remarked that all voting would be held in the Franklin Town Hall for the November election.

c. Meet the Candidates. Coun. Kretser suggested a "meet the candidates" night be scheduled at the Town Hall so voters can determine which candidate is best suited for the position of Highway Superintendent. Republican and Democrat party chairmen will coordinate this event and it will be independent of a Town Board meeting.

QUESTIONS AND COMMENTS:

A referendum should be held on the Garage renovation even though it is under \$1 million.
The Board will take this into consideration.

ADJOURNMENT:

There being no further business to conduct, the meeting adjourned at 8:30 PM
Respectfully submitted, Sandra J. Oliver Town Clerk

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