

Town of Elba
Special Town Board Meeting
November 3, 2020

Supervisor Hynes called the meeting to order at 11:10 a.m.; followed by the Pledge to the Flag.

Those in attendance included:

Supervisor Hynes
Councilman Augello
Councilman Chamberlain
Councilman Coughlin

Others Present:

Town Clerk Werth
Town Attorney, David Schubel

Absent:

Councilwoman Marshall

RESOLUTION #35-2020:

Councilman Chamberlain offered the following:

At a special meeting of the Town Board of the Town of Elba in the County of Genesee, held in the Town on the 3rd day of November, 2020 at 11:00am.

In the Matter of the Proposed Increase in the Maximum Amount to be Expended on Water District No. 2 from \$17,769,000.00 to \$18,800,000.00 Pursuant to Section 209-h of The Town Law

**FINAL ORDER INCREASING
MAXIMUM AMOUNT TO BE
EXPENDED**

WHEREAS, the Town Board of the Town of Elba formed Elba Water District No. 2 in accordance with Town Law Article 12-A, a FINAL ORDER ESTABLISHING DISTRICT having been duly adopted July 19, 2017, a certified copy of which having been recorded in the Genesee County Clerk's Office on July 21, 2017, and

WHEREAS, the Final Order provided that Water District No. 2 was to be constructed at a maximum cost not to exceed \$17,769,000.00, and

WHEREAS, it now appears that such maximum cost to be expended must be increased for construction of Water District No. 2 from \$17,769,000.00 to \$18,800,000.00 due to significant upgrades to the overall Genesee County Water System, and

WHEREAS, the upgrades include the County of Genesee, pursuant to an inter-municipal agreement with the Town of Elba, contributing \$995,000.00 for the upsizing of the water storage tank and water mains, and

WHEREAS, the Village of Elba, pursuant to an inter-municipal agreement with the Town of Elba, contributing \$250,000.00 toward the project, and an additional \$36,000.00 for demolition of the Village water tank, and

WHEREAS, a revised map, plan and report was prepared by Clark Patterson Lee dated July 2019, which engineers are duly licensed in the State of New York, and which revised map, plan and report is on file in the office of the Elba Town Clerk for public inspection, and

WHEREAS, the maximum amount to be expended as stated in the revised map, plan and report is increased from \$17,769,000.00 to \$18,800,000.00, and

WHEREAS, an ORDER CALLING PUBLIC HEARING was duly adopted by the Elba Town Board on July 11, 2019 pursuant to Town Law section 209-h setting a public hearing on the proposed increase on the 8th day of August, 2019 at 7:00pm at the Elba Town Hall, 7 Maple Avenue in the Town of Elba, and

WHEREAS, a certified copy of the ORDER CALLING PUBLIC HEARING was published in the Town's Official newspaper on July 25, 2019 and duly posted on the sign board of the Town on July 25, 2019, and a certified copy of the ORDER CALLING PUBLIC HEARING was also filed with the New York State Comptroller in accordance with Town Law, and

WHEREAS, a public hearing on increasing the amount to be expended was held on the 8th day of August, 2019 at 7:00pm by the Elba Town Board at the Elba Town Hall at which all persons desiring to be heard were heard, and

WHEREAS, pursuant to Part 617 of the Implementing Regulations pertaining to Article VIII (State Environmental Quality Review Act), it has been determined by the Town Board that approving the maximum amount to be expended would not have a significant effect upon the environment, and

WHEREAS, the Town Board duly considered all of the evidence given at the public hearing, and

WHEREAS, following said Public Hearing and based upon the evidence given thereat, said Town Board adopted a Resolution and Order on August 8, 2019, subject to permissive referendum, determining among other things as set forth in subdivision 1 of Section 209-h of the Town Law that it is in the public interest to authorize said increase in the maximum estimated cost of \$18,800,000.00 and no petition for permissive referendum was filed relating thereto, and

WHEREAS, it was necessary to file an application with the New York State Comptroller in accordance with the provisions of Section 209-h of the Town Law for permission of the State Comptroller to establish such Water District at the revised maximum cost of \$18,800,000.00, and the State Comptroller having duly made an Order in duplicate, dated the 26th day of October, 2020, granting permission to increase the maximum amount to be expended on behalf of Water District No. 2 from \$17,769,000.00 to \$18,800,000.00; and one copy of each Order having been duly filed in the office of the State Department of Audit and Control, and the other in the Office of the Town Clerk of this Town, and

WHEREAS, it is now necessary to adopt a final order establishing said Water District No. 2 at the revised maximum amount of \$18,800,000.00

NOW, THEREFORE, BE IT ORDERED, by the Town Board of the Town of Elba, Genesee County, New York as follows:

Section 1. The establishment of the Town of Elba Water District No. 2 in the Town of Elba and the construction of the improvements therefore at a revised maximum amount of \$18,800,000.00 is hereby approved. The Town is hereby authorized to undertake such water system capital improvements project, such work to generally consist of (but not limited to) the construction and installation of approximately 280,000 linear feet of 8-inch and 12-inch diameter water main, installation of a 750,000 gallon water tank and a trihalomethane (THM) removal system, as well as other such improvements as more fully identified in (or contemplated by) such map, plan and report, as revised, prepared in connection with such project, including land or rights in land, stream and road crossings, furnishings, all related right-of-way costs, new service installation, site work, water tank and other ancillary work, including hydrants, valves, fittings, connections, fill, services, appurtenances, preliminary costs and other improvements and costs incidental thereto and in connection with the financing thereof (collectively, the "Purpose").

Section 2. Water District No. 2 shall be constructed as set forth hereinabove at a maximum cost not to exceed \$18,800,000.00, and the plan of financing is the issuance of serial bonds in the amount of \$18,800,000.00, said amount to be offset by the receipt of any funds from the United States of America, the State of New York, the County of Genesee and/or local entities including but not limited to loan and/or grant funds from USDA Rural Development, a contribution of the County of Genesee, a contribution of the Village of Elba and the balance of the costs will be assessed by the assessment, levy and collection of the special assessments from the several lots and parcels of land within Water District No. 2, 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 District shall confer upon the same, to pay the principal of and interest on said bonds as shall become due and payable.

Section 3. Within ten (10) days after the 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 in Albany, New York copies of this Order, certified by said Town Clerk.

Dated: November 3, 2020

TOWN BOARD OF THE TOWN OF ELBA

Donna Hynes, Supervisor

Wade Chamberlain, Councilperson

Daniel Coughlin, Councilperson

ATTEST

ABSENT

Maureen Marshall, Councilperson

Trisha Werth, Town Clerk

Michael Augello, Councilperson

Second by: Councilman Augello

Ayes: Augello, Chamberlain, Coughlin, Hynes

APPROVED by unanimous vote (4-0)

RESOLUTION #36-2020:

Councilman Coughlin offered the following:

AN AMENDING AND RESTATING BOND RESOLUTION, DATED NOVEMBER 3, 2020, OF THE TOWN BOARD OF THE TOWN OF ELBA, GENESEE COUNTY, NEW YORK (THE "TOWN"), FURTHER AMENDING THE BOND RESOLUTION THAT WAS ADOPTED ON JULY 19, 2017 AND AMENDED ON MARCH 8, 2018, AND AUTHORIZING A CAPITAL IMPROVEMENTS PROJECT IN THE TOWN OF ELBA WATER DISTRICT NO. 2 AND THE CONSTRUCTION OF IMPROVEMENTS THEREIN, AT AN ESTIMATED MAXIMUM COST OF \$18,800,000 AND AUTHORIZING THE ISSUANCE OF SERIAL BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$17,769,000 (WITH SUCH BALANCE OF THE ESTIMATED MAXIMUM COST TO BE PAID FOR BY FUNDS FROM THE COUNTY OF GENESEE, VILLAGE OF ELBA AND THE TOWN) PURSUANT TO THE LOCAL FINANCE LAW TO FINANCE SAID PURPOSE, SAID AMOUNT OF BONDS TO BE OFFSET BY ANY FEDERAL, STATE, COUNTY AND/OR LOCAL FUNDS RECEIVED, AND DELEGATING THE POWER TO ISSUE BOND ANTICIPATION NOTES IN ANTICIPATION OF THE SALE OF SUCH BONDS TO THE TOWN SUPERVISOR.

WHEREAS, on March 8, 2018, the Town Board of the Town of Elba, Genesee County, New York (the "Town") adopted an amending and restating bond resolution (the "2018 Amending Bond Resolution") entitled:

AN AMENDING AND RESTATING BOND RESOLUTION, DATED MARCH 8, 2018, OF THE TOWN BOARD OF THE TOWN OF ELBA, GENESEE COUNTY, NEW YORK (THE "TOWN"), AMENDING THE BOND RESOLUTION THAT WAS ADOPTED ON JULY 19, 2017, AND AUTHORIZING A CAPITAL IMPROVEMENTS PROJECT IN THE TOWN OF ELBA WATER DISTRICT NO. 2 AND THE CONSTRUCTION OF IMPROVEMENTS THEREIN, AT AN ESTIMATED

MAXIMUM COST OF \$17,769,000 AND AUTHORIZING THE ISSUANCE OF SERIAL BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$17,769,000 PURSUANT TO THE LOCAL FINANCE LAW TO FINANCE SAID PURPOSE, SAID AMOUNT TO BE OFFSET BY ANY FEDERAL, STATE, COUNTY AND/OR LOCAL FUNDS RECEIVED, AND DELEGATING THE POWER TO ISSUE BOND ANTICIPATION NOTES IN ANTICIPATION OF THE SALE OF SUCH BONDS TO THE TOWN SUPERVISOR.

and

WHEREAS, the Town Board wishes to modify the 2018 Amending Bond Resolution for the primary purpose of modifying the scope of the project and to make other modifications to the 2018 Amending Bond Resolution as may be consistent with the project plan and the law; the

WHEREAS, the expansion in the scope of the project involves upgrades being made to the overall Genesee County Water System; and

WHEREAS, the upgrades included in the Genesee County Water System improvements project will be completed as part of the Town of Elba Water District No. 2 project to simplify construction coordination and reduce costs; and

WHEREAS, due to a modification to the scope of the project, the Town Board wishes to modify the 2018 Amending Bond Resolution for the primary purposes of increasing: a) the estimated maximum cost of the project from \$17,769,000 to \$18,800,000 and to make other modifications to the 2018 Amending Bond Resolution as may be consistent with law; and

WHEREAS, a contribution of \$995,000 will be paid by Genesee County as set forth in an inter-municipal agreement with Genesee County; and

WHEREAS, the Village of Elba, pursuant to an inter-municipal agreement with the Town, will contribute \$250,000 towards the project and will make an additional contribution of \$36,000 to assist with the tank demolition; and

WHEREAS, the Town will make a contribution of \$7,000 toward the project; and

WHEREAS, the Town has determined that the scope of such original capital project be modified to include additional improvements in Water District No. 2 (the "District"); and

WHEREAS, the Town Board directed Clark Patterson Lee to prepare a revised map, plan and report to include such improvements; and

WHEREAS, the 2018 Amending Bond Resolution is being modified to include additional improvements as previously described, and is otherwise being reaffirmed and ratified in all other material respects; and

WHEREAS, the Town Board now wishes to amend and restate (in its entirety) the 2018 Amending Bond Resolution for the reasons identified above, and to make other determinations to the 2018 Amending Bond Resolution as may be consistent with law; and

WHEREAS, the Town has previously issued bond anticipation notes pursuant to the Original Bond Resolution and 2018 Amending Bond Resolution, but has not yet entered into permanent financing arrangements thereunder (i.e., the issuance of long-term serial bonds); and

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 Town Board) as follows:

SECTION 1. The Town is hereby authorized to undertake a certain water system capital improvements project, such work to generally consist of (but not be limited to) the construction and installation of approximately 280,000 linear feet of 8-inch and 12-inch diameter water main, installation of a 750,000 gallon water tank and a trihalomethane (THM) removal system, 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, including land or rights in land, stream and road crossings, furnishings, all related right-of-way costs, new service installation, site work, water tank and other ancillary work, including hydrants, valves, fittings, connections, fill, services, appurtenances, preliminary costs and other improvements and costs incidental thereto and in connection with the financing thereof (collectively, the "Purpose"). The amended estimated maximum cost of said purpose is \$18,800,000.

SECTION 2. The Town Board plans to finance the estimated maximum cost of said purpose by: a) the issuance of serial bonds in an aggregate principal amount not to exceed \$17,769,000 of the Town, hereby authorized to be issued therefore pursuant to the Local Finance Law, said amount to be offset by any federal, state, county and/or local funds received including, but not limited to, a USDA Rural Development Agency grant, and b) a contribution of \$995,000 will be paid by Genesee County, c) a contribution of \$286,000 (being the sum of \$250,000 and \$36,000) will be paid by the Village of Elba and d) the Town will make a contribution of \$7,000 toward the project from Town funds and unless paid from other sources or charges, the cost of the water improvement will be paid by the assessment, levy and collection of special assessments from the several lots and parcels of land within the proposed 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 the benefit conferred upon the same, to pay the principal of and interest on said bonds as the same shall become due and payable.

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 the Project shall be paid by the assessment, levy and collection of special assessments from the several lots and parcels of land within the area benefited by said improvements, 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 said bonds 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 July 19, 2017 or within 60 days prior to the earlier of (a) July 19, 2017 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 original declaration of its "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 Supervisor is further authorized to call in and redeem any outstanding obligations that were authorized hereunder (at such times and in such amounts and maturities as may be deemed appropriate after consultation with Town officials and the Town's municipal advisor), to approve any related notice of redemption, and to take such actions and execute such documents as may be necessary to effectuate any such calls for redemption pursuant to Section 53.00 of the Local Finance Law, with the understanding that no such call for redemption will be made unless such notice of redemption shall have first been filed with the Town Clerk.

SECTION 12. 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 13. In the absence or unavailability of the Town Supervisor, the Deputy Supervisor is hereby specifically authorized to exercise the powers delegated to the Town Supervisor in this resolution.

SECTION 14. 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 twenty 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 15. 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 said Town and designated as the official newspaper of said Town for such publication.

SECTION 16. Nothing in this amendment shall affect the validity of the Original July 19, 2017 Bond Resolution or the March 8, 2018 Amending Bond Resolution, or any action taken thereunder and any such actions are hereby ratified.

SECTION 17. This Resolution is effective immediately.

The question of the adoption of the foregoing resolution (including the amending and restating bond resolution) was duly put to vote on a roll call, which resulted as follows:

AYES: Supervisor Hynes
 Councilman Coughlin
 Councilman Augello
 Councilman Chamberlain

NOES:

ABSENT: Councilwoman Marshall

The foregoing resolution was thereupon declared duly adopted.

CERTIFICATE OF RECORDING OFFICER

The undersigned hereby certifies that:

(1) The undersigned is the duly qualified and acting Clerk of the Town of Elba, New York (the “Town”) and the custodian of the records of the Town, including the minutes of the proceedings of the Town Board; and is duly authorized to execute this certificate.

(2) Attached hereto is a true and correct copy of a resolution duly adopted at a meeting of the Town Board held on March 8, 2018 and entitled:

AN AMENDING AND RESTATING BOND RESOLUTION, DATED NOVEMBER 3, 2020, OF THE TOWN BOARD OF THE TOWN OF ELBA, GENESEE COUNTY, NEW YORK (THE “TOWN”), FURTHER AMENDING THE BOND RESOLUTION THAT WAS ADOPTED ON JULY 19, 2017 AND AMENDED ON MARCH 8, 2018, AND AUTHORIZING A CAPITAL IMPROVEMENTS PROJECT IN THE TOWN OF ELBA WATER DISTRICT NO. 2 AND THE CONSTRUCTION OF IMPROVEMENTS THEREIN, AT AN ESTIMATED MAXIMUM COST OF \$18,800,000 AND AUTHORIZING THE ISSUANCE OF SERIAL BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$17,769,000 (WITH SUCH BALANCE OF THE ESTIMATED MAXIMUM COST TO BE PAID FOR BY FUNDS FROM THE COUNTY OF GENESEE, VILLAGE OF ELBA AND THE TOWN) PURSUANT TO THE LOCAL FINANCE LAW TO FINANCE SAID PURPOSE, SAID AMOUNT OF BONDS TO BE OFFSET BY ANY FEDERAL, STATE, COUNTY AND/OR LOCAL FUNDS RECEIVED, AND DELEGATING THE POWER TO ISSUE BOND ANTICIPATION NOTES IN

ANTICIPATION OF THE SALE OF SUCH BONDS TO THE TOWN SUPERVISOR.

(3) Such meeting was duly convened and held and such resolution was duly adopted in all respects in accordance with law and the regulations of the Town (or, to the extent applicable, in accordance with the terms of any Executive Order from the Governor of the State of New York that may be in place and be controlling, or otherwise affecting, the proceedings of the Town and/or the Town Board). To the extent required by law or such regulations, due and proper notice of such meeting was given. A legal quorum of the members of the Town Board was present throughout such meeting, and a legally sufficient number of members (2/3 of the total voting strength of the Town Board) voted in the proper manner for the adoption of the resolution. All other requirements and proceedings under law, such regulations, any such Executive Order, or otherwise, incident to such meeting and the adoption of the resolution, including any publication, if required by law, have been duly fulfilled, carried out and otherwise observed.

(4) The seal appearing below constitutes the official seal of the Town and was duly affixed by the undersigned at the time this certificate was signed.

IN WITNESS WHEREOF, the undersigned has executed this certificate on _____, 2020.

(SEAL)

Town Clerk

Second by: Councilman Chamberlain
Ayes: Augello, Chamberlain, Coughlin, Hynes
APPROVED by unanimous vote (4-0)

ADJOURNMENT

MOTION was offered from Councilman Chamberlain second by Councilman Coughlin to adjourn the Special Town Board meeting at 11:21 a.m.

Ayes: Augello, Chamberlain, Coughlin, Hynes
MOTION CARRIED by unanimous vote (4-0)

Respectfully Submitted,

Trisha Werth
Town Clerk