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May 2, 1994

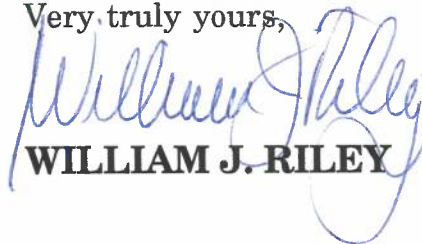
Mrs. Patricia Kinville
Town Clerk
P.O. Box 137
Forestport, NY 13338

Dear Pat:

Enclosed please find a Resolution I have prepared regarding the sale to the Forestport Presbyterian Church. You should have the Board pass the resolution at the May 11th meeting and within 10 days of its adoption you have to publish the notice of the adoption of the resolution in the Town paper and it has to be on the Town sign board pursuant to the enclosed sections.

Thank you, and if you have any questions, please advise.

Very truly yours,



WILLIAM J. RILEY

WJR:ck

Encs.

cc Russell J. Hirschey

RECEIVED MAY 03 1994

RESOLUTION
SUBJECT TO PERMISSIVE REFERENDUM

At a meeting of the Town Board of the Town of Forestport, held at the Town Hall in said Town, County of Oneida and State of New York, on the 11th day of May, 1994, at 7:30 o'clock P. M., there were:

PRESENT: SUPERVISOR RUSSELL J. HIRSCHHEY, COUNCILWOMAN JOAN INGERSOLL,
COUNCILMAN BRIAN FOX AND COUNCILMAN JOHN G. NORTON -----

ABSENT: COUNCILMAN FREDERICK BITTER-----

Mr. BRIAN FOX offered the following resolution and moved its adoption:

WHEREAS, the Town of Forestport no longer holds the following property for a public use,

NOW, THEREFORE, BE IT

RESOLVED AND DETERMINED, pursuant to the provisions of Town Law subject to a permissive referendum that the Town of Forestport shall transfer to the Forestport Presbyterian Church the following described parcel of land:

ALL THAT PIECE OR PARCEL OF REAL PROPERTY lying and being in the Town of Forestport, County of Oneida and State of New York and bounded and described as follows:

BEGINNING at a point on the easterly bounds of Division Street at its intersection with the division line between the lands of The First Presbyterian Church of Forestport on the north and the lands of the Town of Forestport on the south; thence along said division line S. 80°-38'-00" E., 66.18 feet to an iron bolt found on the division line between the lands of Dorothea S. Rose, ^{new or formerly} on the east and the lands of the Town of Forestport on the west; thence along said division line S. 11°-25'-21" W., 21.14 feet to a point; thence N. 81°-07'-56" W., 65.88 feet along a fence line to a point on the easterly bounds of Division Street; thence along said street bounds N. 10°-34'-55" E., 21.70 feet to the point of beginning containing 0.033 acres of land.

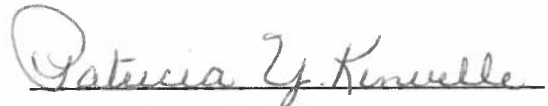
BE IT RESOLVED that pursuant to Sections 82 and 90 of the Town Law that within ten (10) days from the date of this resolution the Town Clerk shall post and publish a notice which shall set forth the date of the adoption of the resolution, shall contain an abstract of such resolution concisely setting forth the purpose and effect thereof, shall specify that this resolution was adopted subject to a permissive referendum; and shall publish such notice in the Boonville Herald and Rome Daily Sentinel, newspapers published in Oneida County having

general circulation in the Town of Forestport, and in addition thereto that the Town Clerk shall post or cause to be posted on the sign-board of the Town of Forestport, a copy of such notice within ten (10) days after the date of the adoption of this resolution.

Seconded by Mr. JOHN NORTON and duly put to a vote which resulted as follows:

AYES: 4

NOES: 0

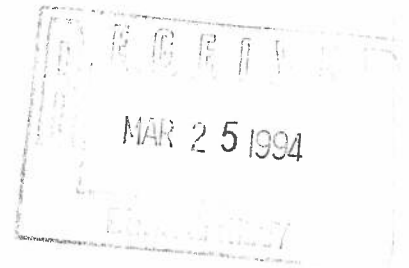


PATRICIA Y. KINVILLE
TOWN CLERK
TOWN OF FORESTPORT

RICHARD J. WARREN
ATTORNEY AND COUNSELOR AT LAW

105 MAIN STREET, P.O. BOX 197
BOONVILLE, NEW YORK 13309

TELEPHONE (315) 942-4117



March 23, 1994

William J. Riley, Esq.
Durr & Riley
Attorneys At Law
322 Post Street
Boonville, NY 13309

RE: Forestport Presbyterian Church - Kruger

Dear Bill:

I represent the Forestport Presbyterian Church which is attempting to sell the Manse property located on Division Street. I have enclosed a photocopy of a map prepared by LaFave, White & McGivern. Apparently, parcel "A" consisting of .033 acres on Division Street is used by the Church as a portion of the Manse property (please note the southerly boundary is an existing fence) but record title to "parcel A" is owned by the Town of Forestport.

I am presently checking with Bob White's office to see if he has a copy of the Town of Forestport deed as we will need a deed reference and because I want to be sure that there is no restrictive covenant in the deed relating to the use of said property for purposes of a village park. Assuming there is no such restrictive covenant, I believe the Town of Forestport can convey parcel A to the church since it apparently is not presently held by the Town of Forestport for a "public use" as it has been used by the church as a portion of the Manse property for several decades as indicated by the location of the existing fence line. I believe the town may be required to charge a fair and adequate consideration but I assume this will be nominal for a .033 acre parcel.

Of course, if the Town Board decided to convey the property to the church, the resolution authorizing the sale would be subject to permissive referendum pursuant to Section 64 (2) of the Town Law. Section 90 of the Town Law requires that the Town Clerk

William J. Riley, Esq.
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post and publish a notice of the resolution indicating the same is subject to permissive referendum. Section 90 of the Town Law indicates that the notice shall be posted and published in the same manner as a notice of a special election which I believe is provided in Section 82 of the Town Law. I have enclosed a copy of Section 82, Section 90, and Section 64 (2) of the Town Law for your reference and suggest that we could follow the same procedure as was followed in the transfer from the Town of Forestport to Betty James.

I will forward a copy of the deed to the Town of Forestport after I receive the same. I have enclosed a copy of my letter to Russell Hirschey and the enclosures sent with said letter for your reference.

Yours very truly.



RICHARD J. WARREN

RJW:mm
Enclosures

cc: Russell Hirschey

§ 93. Repeal of acts or resolutions of town board

§ 94. Referendum on acts or resolutions of the town board without petition

HISTORY:

Add, L 1932, ch 634.

CROSS REFERENCES:

This article referred to in §§ 11, 12, 24-a, 50-a, 54, 55, 57, 64, 172-b, 172-c, 185, 190-c, 198, 199, 200, 209-b, 209-e, 209-q, 209-r; Gen Mun Law §§ 6-c, 6-e; Loc Fin Law § 35.00; Pub A Law § 1767; CLS Unconsol Laws ch 219 § 2; ch 289 § 6; ch 297 § 1.

§ 90. Acts or resolutions of the town board that are subject to a referendum on petition

Whenever this chapter shall expressly provide that an act or resolution of the town board is subject to a permissive referendum, such act or resolution shall be subject to a referendum on petition as set forth in the next section, unless a proposition therefor shall have been adopted at a town election. Within ten days after the adoption by the town board of any resolution which is subject to a permissive referendum as above defined, the town clerk, in the same manner as provided for notice of a special election, shall post and publish a notice which shall set forth the date of the adoption of the resolution and contain an abstract of such act or resolution concisely stating the purpose and effect thereof. The notice shall specify that such resolution was adopted subject to a permissive referendum.

HISTORY:

Add, L 1932, ch 634, amd, L 1942, ch 85, L 1943, ch 710, Pt 1, eff July 2, 1944.

Laws 1944, ch 606 eff Apr 6, 1944, amended the effective date of L 1943, ch 710 to read Apr 2, 1945, and L 1945, ch 338, § 64, eff Mar 28, 1945, moved the effective date forward to Sept 2, 1945.

NOTE:

[1943] Amendment required by Local Finance Law § 35.00.

CROSS REFERENCES:

This section referred to in §§ 91, 170.

Consolidation of fire protection districts, § 172-b.

Alteration of boundaries of fire protection district, § 172-c.

RESEARCH REFERENCES AND PRACTICE AIDS:

18 NY Jur, Elections § 545.

59 NY Jur, Towns § 118.

42 Am Jur 2d, Initiative and Referendum §§ 9 et seq.

9 Am Jur Legal Forms 2d, Initiative and Referendum, Forms 146:3-146:9.

CASE NOTES

The town board must notify the county board of elections of a town proposition to be placed on the ballot in the general election soon enough for the board of elections to have the ballots printed in time to mail them to military voters by the date set each year as the latest date for such mailing. 1973 Ops Atty Gen July 26 (informal).

Town of first class may provide for collection and disposal of refuse and garbage by adoption of

resolution therefor, subject to permissive referendum. 1945 Ops St Compt 262.

A resolution of a town board approving an offer for the sale of real property subject to permissive referendum and effective 30 days after the adoption thereof provided no petition was filed in the meantime could not be rescinded within the 30-day period where no petition was filed and the purchaser was irrevocably committed to purchase

such town in which there is a town comptroller, such list of expenditures, together with such bills shall be presented to said town comptroller for audit no later than the last day of each month and the supervisor shall so reimburse each petty cash fund in an amount equal to the total of such bills which the town comptroller shall so audit and allow. Any of such bills or any portion of any of such bills which the town board or the town comptroller, as the case may be, shall refuse to audit and allow shall be the personal liability of the officer for which the fund was established and he shall promptly reimburse his petty cash fund in the amount of such disallowances. If such reimbursement has not been made by the time of the first payment of salary to such officer after the action of the town board or the town comptroller, as the case may be, in disallowing an amount so expended, such amount shall be withheld from his salary payment and, if necessary, subsequent salary payments and paid into the appropriate petty cash fund until an amount equal to the amount so disallowed has been repaid to such petty cash fund. Any bond or undertaking filed by any town officer or department or office head shall be available to the town for recovery of any losses incurred by reason of the operation of the petty cash fund established for him.

2. Acquisition and conveyance of real property. May acquire by lease, purchase, or by condemnation in the manner provided by law, any lands or rights therein, either within or outside the town boundaries, required for any public purpose, and may, upon the adoption of a resolution, convey real property in the name of the town, which resolution shall be subject to a permissive referendum. If the property or rights be acquired by condemnation, the town board may at once enter into possession of the real property or rights described when the judgment shall have been made and entered, and the town shall thereupon stand charged and responsible for the prompt payment of the amount which may ultimately be awarded. Lands or rights required for a district purpose shall be acquired by the town board in the name of this district, and the cost thereof shall be a charge upon and assessed against such district. Such district lands and rights may be sold or leased in the manner provided in subdivision twelve of section one hundred ninety-eight of this chapter.

3. Management, custody and control of town property. Shall have the management, custody and control of all town lands, buildings and property of the town and keep them in good repair and may cause the same to be insured against loss or damage by fire or other hazard.

4. Indemnity insurance. May contract at the expense of the town for insurance indemnifying the town against any loss arising from injuries to persons or property.

5. Vacancies. Whenever a vacancy shall occur or exist in any town office, the town board or a majority of the members thereof, may appoint a qualified person to fill the vacancy. If the appointment be made to fill a vacancy in an appointive office, the person so appointed shall hold office for the remainder of the unexpired term. If the appointment be made to fill a vacancy in an elective office, the person so appointed shall hold office until the commencement of the calendar year next succeeding the first annual

—³⁷— acre plot with a view to the establishment of a public park or playground thereon.

9. The petitioners are informed and believe that no provisions have been made either in the annual budget of the town or otherwise for the expenditure of town funds for the improvement of the said —³⁸— acre plot.

10. The illegal establishment of a —³⁹— upon the said —⁴⁰— acre plot, the acquisition of said plot therefor and the expenditure of town funds in connection therewith, constitute a waste of the town funds to the injury of the town and its taxpayers, removes a valuable parcel of property from the tax rolls, thereby increasing the load on the remaining taxpayers, and especially and irreparably damages the petitioners in view of the proximity of their property to the said plot.

11. The petitioners are advised and believe that they have no other adequate remedy at law.

12. No previous application for this or similar relief has been made to any court or judge.

WHEREFORE, the petitioners pray that a final order be granted:

(a) adjudging that the establishment of a public park or playground on the said —⁴¹— acre plot is unlawful and improper;

(b) adjudging that the acquisition of the said —⁴²— acre plot by the Town Board for the purpose of establishing thereon a —⁴³— is unlawful and improper;

(c) adjudging that the expenditure of town funds the use of town equipment and employees upon the said —⁴⁴— acre plot for the purpose of establishing thereon a —⁴⁵— is unlawful and improper;

(d) forthwith enjoining and restraining the respondents from establishing a —⁴⁶— upon the said —⁴⁷— acre plot, from acquiring the said —⁴⁸— acre plot for the purpose of establishing thereon a —⁴⁹— and from expending town funds and using town equipment and employees for the purpose of establishing a —⁵⁰— upon the said —⁵¹— acre plot;

(e) requiring and compelling the respondents, constituting the Town Board, to cancel and annul the acquisition of the said —⁵²— acre plot and

(f) granting the petitioners such other and different relief as may be just and proper

[Date, Signatures and Verification]

[Adapted from papers and exhibits in Knapp v. Fasbender, May 1951 Term, Appellate Division, 2nd Dept.]

§ 82. Notice of submission of proposition; hours of voting

The town board shall adopt a resolution at least twenty days before every special town election designating the hours of opening and closing the polls and the place or places of holding the election, and setting forth in full all propositions to be voted upon. If the town board shall designate more than one voting place, the resolution and the notice hereinafter provided for shall specify the place at which the qualified voters of each election district shall vote. The polls shall remain open for at least six consecutive hours between eight o'clock in the forenoon and eight o'clock in the evening. The voting upon a proposition shall be by ballot and each proposition submitted shall be separately stated and numbered thereon. The town clerk shall give notice of such special town election at the expense of the town by the publication of a notice in a newspaper published in said town, if there be any, or, if there be none, in a newspaper published in the county having general

circulation in the town, specifying the time when and place or places where such election will be held, the hours during which the polls will remain open for the purpose of receiving ballots, and setting forth in full all propositions to be voted upon. The first publication of such notice shall be at least ten days prior to the time of such special election. In addition, the town clerk shall post or cause to be posted a copy of such notice on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter at least ten days prior to such election. In the event that any such questions or proposition shall be submitted at a biennial town election, notice that the same will be submitted setting them forth in full shall be published and posted in the manner above provided for special town elections.

HISTORY:

Add, L 1932, ch 634, with substance transferred from §§ 42, 47, 48, 51, 57, 58, 65; amd, L 1963, ch 420, § 3, eff Jan 1, 1964.
See 1963 note under 64.

RESEARCH REFERENCES AND PRACTICE AIDS:

18 NY Jur, Elections §§ 542, 544, 546.
26 Am Jur 2d, Elections §§ 193-199, 227.

Forms:

See "FORMS" heading following "CASE NOTES", infra.

CASE NOTES

Town of first class may provide for collection and disposal of refuse and garbage by adoption of resolution therefor, subject to permissive referendum. 1945 Ops St Compt 262.

Where town board is made up of town officers it may be deemed general governing body of town, and may lawfully submit proposition to be voted upon by ballot authorizing town to convey to people of state lands for extension and protection of that part of Long Island State Park System known as Jones Beach. Hurley v Cheshire (1932) 234 AD 464, 255 NYS 486, affd 259 NY 582, 182 NE 190.

The town board on its own motion may submit to referendum a resolution for the issuance of bonds maturing in more than five years. In the referendum, paper ballots may be used. No person shall be entitled to vote unless he is an elector of the town and the owner of property assessed upon the last preceding town assessment roll. An elector of the town need not necessarily be a registered or enrolled voter. A public park so established shall be administered by the town board. Town board may accept gift for park purposes, absolutely or in trust. Town board may establish capital reserve fund to finance cost of park. If the land to be acquired is less than fifty acres, a down payment from current funds will be necessary, since the term of the proposed bonds exceeds five years. 1966 Ops St Compt File #938.

Where it is claimed that election resulting upon resubmission of local option questions was void

because polls at two of three election districts were closed one hour prior to time fixed by former § 51 because of misconception of "Daylight Saving Law," court has no power to determine that question in summary manner by declaring result of election void, upon motion by hotel keeper in said town. Gumaer v Sisson (1919) 186 AD 561, 174 NYS 737.

The notice of a special town election held to vote on a resolution of the town board must be published in a specified newspaper and may not be mailed to electors of the town instead of such publication. 1969 Ops St Compt File #523.

Where mandatory 10 days' notice requirement of Town Law § 82, was not complied with, the election could not be upheld when attacked in a declaratory judgment action. D'Addario v McNab (1973) 41 AD2d 677, 341 NYS2d 462, affd 32 NY2d 84, 343 NYS2d 124, 295 NE2d 792.

Jurisdiction of court in action to declare vote on town proposition void was based on jurisdiction of court to grant relief in a plenary action rather than on Election Law § 330, which gives the court summary jurisdiction in certain instances. D'Addario v McNab (1973) 41 AD2d 677, 341 NYS2d 462, affd 32 NY2d 84, 343 NYS2d 124, 295 NE2d 792.

Fact that special proceeding pursuant to Election Law § 330 could not be used to set aside vote on proposition did not deprive court of jurisdiction to nullify vote on proposition which failed to comply with posting or publication requirements of Town