

TOWN OF PORTLAND PUBLIC HEARING
INCREASE AND IMPROVEMENT OF THE TOWN OF PORTLAND WATER DISTRICT NO. 2
PORTLAND TOWN HALL
May 24, 2023 – 6:00 P.M.

BOARD MEMBERS PRESENT:

| | |
|----------------|------------|
| Richard Lewis | Supervisor |
| Gary Miller | Council |
| Dave McIntyre | Council |
| Patti Farrell | Council |
| Tammy Thompson | Council |

OTHERS PRESENT:

| | |
|----------------|------------|
| Joel Seachrist | Attorney |
| Barb Smith | Town Clerk |

1 members of the public

Meeting called to Order by Supervisor Lewis at 6:00 p.m. with the Pledge to the flag.
Supervisor Lewis Opened Public Hearing on Increase and Improvement of Town of Portland Water District No. 2 at 6:01pm.

Any Public comment? None

Affidavit of Publication was posted in the Observer and Town Office on May 12, 2023.

CLOSE PUBLIC HEARING

RESOLUTION 45-2023

On a motion of Council McIntyre, seconded by Council Farrell the following resolution was ADOPTED Aye 5 Lewis, McIntyre, Miller, Farrell, Thompson

Nay 0

RESOLVED The Portland Town Board approves to close public hearing on Increase and Improvement of Town of Portland Water District No. 2 at 6:05pm.

MINUTES:

RESOLUTION 46-2023

On a motion of Council Thompson, seconded by Council Farrell the following resolution was ADOPTED Aye 5 Lewis, McIntyre, Miller, Farrell, Thompson

Nay 0

RESOLVED The Portland Town Board approves the Minutes from the previous meeting as presented.

CORRESPONDENCE:

- Chautauqua County Ach Invoice Payment for Q2 2023 Sales Tax Distribution.
- Email from County for Town to purchase New York State Tax System.

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- Letter from New York State Dept of Taxation & Finance - Certificate of the Final State Equalization Rate for the 2023 Assessment Roll.
- State of New York Department of Taxation and Finance Office of Real Property Tax Services - Certificate of Final Railroad Ceiling
- Letter from City of Dunkirk - asking for donations for Festivals.
- Summary Statement from NYCLASS

PUBLIC COMMENT:

None

OLD BUSINESS

CBI:

Supervisor Lewis stated the County - PJ Wendell wants to set up meeting with CBI to discuss issues. Meeting is set for Tuesday, May 30th. Supervisor Lewis will be attending meeting and invited anyone interested to attend. Meeting will be held at County Building.

WD #2 PROJECT:

**INCREASE AND IMPROVEMENT OF FACILITIES OF THE TOWN OF PORTLAND WATER DISTRICT NO. 2
RESOLUTION 47-2023**

On a motion of Council Miller, seconded by Council McIntyre the following resolution was ADOPTED by:

Roll Call Vote: Unanimous
McIntyre Aye
Miller Aye
Farrell Aye
Thompson Aye
Lewis Aye

RESOLVED The Portland Town Board approves an increase of the estimated cost of the Project from \$2,601,000 to \$4,691,000.

**RESOLUTION AND ORDER
AFTER PUBLIC HEARING APPROVING
THE INCREASE AND IMPROVEMENT OF
FACILITIES OF THE TOWN OF PORTLAND
WATER DISTRICT NO. 2**

WHEREAS, the Town Board of the Town of Portland (herein called “Town Board” and “Town”, respectively), in the County of Chautauqua, New York, has, pursuant to Town Law, created the Town of Portland Water District No. 2 (the “District”); and

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WHEREAS, in November of 2016, the Town Board directed Clark Patterson Lee, competent engineers licensed in New York (“Clark Patterson Lee” or the “Engineer”), to prepare a map, plan and report (the “November 2016 Map, Plan and Report”) for a water system capital improvements project within the District (the “Project”); and

WHEREAS, in February and March of 2019, the Town approved the Project, through Town Law Section 202-b proceedings and other resolutions; and

WHEREAS, on March 13, 2019, the Town adopted a bond resolution authorizing the issuance of certain obligations to finance the cost of the Project; and

WHEREAS, the estimated maximum cost of the Project has since increased due to construction bids coming in higher than expected; and

WHEREAS, due to the above-described increase in costs, the Town has directed Clark Patterson Lee, to prepare a revised map, plan and report (dated May 2023) to amend the November 2016 Map, Plan and Report to reflect such increased costs (hereinafter referred to as Map, Plan and Report); and

WHEREAS, the Project will generally consist of (but not be limited to) the installation of approximately 23,000 linear feet of water main along various roads in the Town, acquisition of land or rights-in-land, as well as other such improvements as more fully identified in (or contemplated by) such map, plan and report referred to above, all of the forgoing to include all necessary site work, equipment, apparatus and other improvements and costs incidental thereto and in connection with the financing thereof (collectively, the “District Improvement” or the “Project”); and

WHEREAS, the scope of the has not materially changed from such originally contemplated project as identified in the November 2016 Map, Plan and Report; and

WHEREAS, the Map, Plan and Report: (a) increases the estimated maximum cost of the Project from \$2,601,000 to \$4,691,000 and (b) increases the aggregate principal amount of bonds required from \$2,601,000 to \$4,691,000; and

WHEREAS, pursuant to the direction of the Town, the Engineer has completed and filed with the Town Board the Map, Plan and Report for such increase and improvement of facilities of the District and has estimated the total cost thereof to be an increased estimated maximum amount of \$4,691,000; said cost to be financed by the issuance of serial bonds of the Town in an increased aggregate principal amount not to exceed \$4,691,000, such amount to be offset by any federal, state, county and/or local funds received; and

WHEREAS, the Map, Plan and Report has not been modified in any material respect other than as described above; and

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WHEREAS, 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; and

WHEREAS, due to the above-described lack of change to the scope of the District Improvement, no further action under SEQRA is necessary; and

WHEREAS, the Town Board issued an Order at its May 10, 2023 meeting calling for a public hearing to be held at the Town Hall, 87 West Main Street, Brocton, New York, on May 24, 2023 at 6:00 o’clock p.m. (prevailing time) or shortly thereafter, to consider the increase and improvement of facilities of the District as enumerated in the Map, Plan and Report 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 with relation thereto as may be required by law, and further ordered the Town Clerk to publish at least once in a newspaper designated as an official newspaper of the Town for such publication, and post on the sign board of the Town maintained pursuant to subdivision 6 of Section 30 of the Town Law, a copy of this Order, certified by said Town Clerk, the first publication thereof and said posting to be not less than ten nor more than 20 days before the date of such public hearing; and

WHEREAS, said notices of the public hearing were properly published and posted and the public hearing duly held at the time and place stated in the notices.

NOW, THEREFORE, BE IT RESOLVED AND DETERMINED BY THE TOWN BOARD OF THE TOWN OF PORTLAND, based on the information provided at the public hearing, as follows:

DETERMINED, that it is in the public interest to increase and improve the facilities of the District as hereinabove described and referred to at the estimated maximum cost of \$4,691,000; and it is hereby

DETERMINED, that the parcels and lots of the District shall be benefited by said increase and improvement of the facilities of the District; and it is hereby

DETERMINED, that all parcels and lots benefited by said increase and improvement of the facilities are included in the District; and it is hereby

ORDERED, that the facilities of the District shall be so increased and improved and that the Engineer shall prepare plans and specifications and make a careful estimate of the expense for said increase and improvement of the facilities, and with the assistance of the Town Attorney, prepare a proposed contract for the execution of the work, which plans and

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specifications, estimate and proposed contract shall be presented to the Town Board as soon as possible; and it is hereby

FURTHER ORDERED, that the expense of said increase and improvement of the facilities shall be financed by the issuance of serial bonds of the Town in an aggregate principal amount not to exceed \$4,691,000, said amount to be offset by any federal, state, county and/or local funds received including, but not limited to, grant funds anticipated to be received from the United States of America – Rural Development Agency, and unless paid from other sources or charges, the costs of said increase and improvement of facilities 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 said bonds as the same shall become due and payable, except as provided by law; and it is hereby

FURTHER ORDERED, that within ten days after adoption of this Resolution and Order, the Town Clerk shall record with the Clerk of the County of Chautauqua a copy of this Resolution and Order, certified by said Town Clerk.

WD #2 PROJECT:

**AMENDING AND RESTATING BOND RESOLUTION FOR THE TOWN OF PORTLAND,
WATER DISTRICT NO. 2
RESOLUTION 48-2023**

On a motion of Council McIntyre, seconded by Council Miller the following resolution was ADOPTED by:

Roll Call Vote: Unanimous
McIntyre Aye
Miller Aye
Farrell Aye
Thompson Aye
Lewis Aye

RESOLVED The Portland Town Board approves to amend and restate the Original Bond Resolution for the purposes of increasing the estimated maximum amount from \$2,601,000 to \$4,691,000.

**AN AMENDING AND RESTATING BOND RESOLUTION,
DATED MAY 24, 2023, OF THE TOWN BOARD OF THE
TOWN OF PORTLAND, CHAUTAUQUA COUNTY, NEW
YORK (THE “TOWN”), AMENDING THE BOND
RESOLUTION THAT WAS ADOPTED ON MARCH 13, 2019,
AND AUTHORIZING A CAPITAL IMPROVEMENTS**

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PROJECT WITHIN THE TOWN OF PORTLAND WATER DISTRICT NO. 2 AT AN ESTIMATED MAXIMUM COST OF \$4,691,000 AND AUTHORIZING THE ISSUANCE OF SERIAL BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,691,000 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.

WHEREAS, on March 13, 2019, the Town Board of the Town of Portland, Chautauqua County, New York (the “Town”) adopted a bond resolution (the “Original Bond Resolution”) entitled:

A BOND RESOLUTION, DATED MARCH 13, 2019, OF THE TOWN BOARD OF THE TOWN OF PORTLAND, CHAUTAUQUA COUNTY, NEW YORK (THE “TOWN”), AUTHORIZING A CAPITAL IMPROVEMENTS PROJECT WITHIN THE TOWN OF PORTLAND WATER DISTRICT NO. 2 AT AN ESTIMATED MAXIMUM COST OF \$2,601,000 AND AUTHORIZING THE ISSUANCE OF SERIAL BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,601,000 OF THE TOWN, 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.

WHEREAS, the Town approved, through Town Law Section 202-b proceedings and the Original Bond Resolution, a certain water system capital improvements project in the Town of Portland Water District No. 2 (the “Project”); and

WHEREAS, the cost of the Project has subsequently increased from \$2,601,000 to \$4,691,000 due to construction bids coming in higher than expected; and

WHEREAS, the Town Board of the Town has determined to proceed with the Project; and

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WHEREAS, the Town has directed Clark Patterson Lee, competent engineers licensed in New York, to prepare a revised map, plan and report (dated May 2023) to the map, plan and report for the Project originally prepared in November 2016 (hereinafter referred to as Map, Plan and Report) to reflect the revised cost of the Project; and

WHEREAS, the scope of the improvements has not materially changed from the Project identified in the November 2016 Map, Plan and Report; and

WHEREAS, the Town Board now wishes to amend and restate the Original Bond Resolution for the purposes of: (a) increasing the estimated maximum amount from \$2,601,000 to \$4,691,000 and (b) increasing the aggregate principal amount of bonds from \$2,601,000 to \$4,691,000, and to make such other modifications in the Original Bond Resolution as may be consistent with law; and

WHEREAS, the Original Bond Resolution is otherwise being reaffirmed and ratified in all other material respects;

WHEREAS, the Town has previously issued bond anticipation notes pursuant to the Original 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 of the Town of Portland, in the County of Chautauqua, New York (the “Town”) (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 water system capital improvements project that will generally consist of (but not be limited to) the installation of approximately 23,000 linear feet of 6-inch and 8-inch water main along various roads in the Town, acquisition of land or rights-in-land, 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, all of the forgoing to include all necessary site work, equipment, apparatus and other improvements and costs incidental thereto and in connection with the financing thereof (collectively, the “Project”). The estimated maximum cost of said purpose is \$4,691,000.

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 \$4,691,000 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, grant funds anticipated to be received from the United States of America – Rural Development Agency. Unless paid from other sources or charges, the cost of such improvement is to be paid by the issuance of serial bonds, and 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 as the same become due and payable, except as provided by law.

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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 cost 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 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 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.

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SECTION 8. To the extent not previously authorized, 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 this resolution.

SECTION 9. This resolution shall constitute the declaration (or reaffirmation) of the Town's "official intent" to reimburse the expenditures authorized in this resolution with the proceeds of the bonds, notes or other obligations authorized herein, as required by United States Treasury Regulations Section 1.150-2.

SECTION 10. 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 11. 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 12. 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 13. 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 14. To the extent applicable, the Town Supervisor is hereby authorized to execute and deliver in the name and on behalf of the Town a project financing agreement prepared by the New York State Environmental Facilities Corporation ("EFC") (the "Project Financing Agreement"). To the extent applicable, the Town Supervisor and the Town Clerk and all other officers, employees and

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agents of the Town are hereby authorized and directed for and on behalf of the Town to execute and deliver all certificates and other documents, perform all acts and do all things required or contemplated to be executed, performed or done by this resolution or any document or agreement approved hereby, including, but not limited to, the Project Financing Agreement.

SECTION 15. 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 16. 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 said 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) Said obligations are authorized in violation of the provisions of the Constitution of New York.

SECTION 17. 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 18. Nothing in this amendment shall affect the validity of the original March 13, 2019 Bond Resolution, or any action taken thereunder, and any such actions are hereby ratified.

SECTION 19. This Resolution is effective immediately.

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

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ARPA FUNDS:

Supervisor Lewis reviewed spreadsheet of Allocated ARPA Funding. Council Miller questioned funds Allocated to Water Extension to 21 Brix. Supervisor Lewis explained all the funds needed to be allocated when applying for grant money. The amount of \$21,837.36 was the balance left from obligated ARPA funds. Supervisor Lewis had not heard anything back from owners of 21 Brix and it has been several months since meeting with Owners. Supervisor Lewis feels there is money to move around if needed.

FIREFIGHTER TAX EXEMPTION:

Supervisor Lewis asked Mr. Seachrist to present the draft for local law at next meeting.

NEW BUSINESS:

RESIGNATION OF DARLENE FOX TOWN ASSESSOR:

RESOLUTION 49-2023

On a motion of Council Lewis, seconded by Council Farrell the following resolution was ADOPTED Ayes 5 Lewis, McIntyre, Miller, Farrell, Thompson

Nays 0

RESOLVED The Portland Town Board approves the resignation of Darlene Fox, Town Assessor.

Supervisor Lewis presented to board a spreadsheet from Town of Pomfret showing cost of sharing their Town Assessor for six months. Pomfret stated they are looking to hire a part-time person to help, not sure if person will be located in Portland?

Supervisor Lewis stated there were no applicantes that applied for assessor job.

Council Thompson suggested if this person does not work out, Town may want to look at giving a sign on bonus with training for a new person as Assessor. Discussion continued regarding wages, hours and assessors availability to Town.

AGREEMENT SHARE ASSESSOR WITH TOWN OF POMFRET:

RESOLUTION 50-2023

On a motion of Council McIntyre, seconded by Council Farrell the following resolution was ADOPTED Ayes 5 Lewis, McIntyre, Miller, Farrell, Thompson

Nays 0

RESOLVED The Portland Town Board approves shared services with the Town of Pomfret for Assessors position.

BOARD MEMBERS/TOWN CLERK:

Council Farrell purchased flowers for Marmaduke Statue.

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With no further business, on a motion made by Supervisor Lewis, seconded by Council McIntyre the meeting adjourned at 6:29pm. Carried unanimously.

Respectfully Submitted by,

Barb Smith-Town Clerk