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November 28, 2023

Via Email Only

Town Board
Town of Ulysses
10 Elm Street
Trumansburg, NY 14886

Re: Clement's Memo

Dear Board Members:

As requested, we've reviewed Mr. Clement's memo regarding the legal obligations and constraints under Town Law related to Resolution 2023-125. Mr. Clement is correct to state that, "Under NYS Town Law, actions subject to permissive referendum do not take effect until 30 days after the Town Board's action to allow time for public notice and (if any) petition for a vote on the action." However, that rule applies only to actions that are statutorily subject to the permissive referendum process. The Town is prohibited from submitting to referendum actions which are not specifically identified as being subject to a referendum under statute.

In our case, the only action statutorily subject to permissive referendum is the establishment of the public park/playground and the acquisition of the land necessary therefor. Specifically, Town Law section 220(3) provides, "[u]pon the adoption of a resolution therefor, subject to a permissive referendum, the town board may... [e]stablish public parks or playgrounds [and] acquire the necessary lands therefor." There is no statute or other legal authority stating that the Town's approval of an appraisal, land survey or purchase agreement is subject to a referendum process. To the contrary, the Town has both express and implied legal authority for the appraisal, land survey and purchase agreement, each of which are discussed below:

1. **The Appraisal:** It is well-established that a Town Board may expend public funds for a valid municipal purpose. Earlier this year, you procured an appraisal of the subject property in order to determine the fair market value thereof. In doing so, you followed the local procurement policy, the moneys were properly included within the necessary budget line item, and the appraiser's invoice was properly approved by vote of the Town Board. There is no doubt that you had a valid municipal purpose for obtaining the appraisal. State law requires municipal purchases of land at fair market value (or less). One well-recognized method of determining fair market value is through an appraisal. In fact, the appraisal assisted the Town in reaching a purchase price, which is a critical factor in both the Board's and the public's

decision making. Neither the Board (in deciding whether to adopt the Resolution) nor the public (in deciding whether to approve the referendum) could make a meaningful decision without knowing the fair market value of the property. Thus, obtaining the appraisal was neither subject to permissive referendum nor an improper expenditure of municipal funds.

2. The Land Survey: It's my understanding that the seller paid for and provided the land survey to the Town. The Town neither conducted the survey, nor expended public funds on the survey. Therefore, Mr. Clement's concerns regarding the land survey are moot.
3. The Purchase Agreement: Town Law section 64 authorizes town supervisors to execute contracts upon approval by the town board. Again, the execution of a contract is not, per se, subject to permissive referendum. While Mr. Clement is correct that the action underlying the purchase contract (i.e. the acquisition of the property) is subject to permissive referendum, that does not mean that the purchase agreement itself is subject to permissive referendum. Importantly, the purchase agreement included a contingency stating that the acquisition of the property is contingent upon approval by the voters in a referendum. In other words, the acquisition, by the very terms of the purchase agreement, cannot take effect unless authorized via referendum. Much like the appraisal, it was important for the Town Board to approve the purchase agreement prior to the referendum in order for the public to have sufficient information to make a meaningful decision. Without a purchase agreement, the terms of the acquisition (such as the purchase price, the size of the parcel, etc.) would be too abstract for the voters to decide whether or not to approve the purchase. Moreover, without a binding agreement, the seller could market and sell the property to another party while the town follows the statutorily mandated referendum process, thereby rendering pointless the town's resolution and referendum. Thus the purchase agreement was necessary in order to allow the referendum process to proceed.

For those reasons, the Town followed precisely the course of action required by State law. The Town performed its due diligence by determining the fair market value of the property and securing the terms and conditions of the purchase. This allowed the public to have a full understanding of the acquisition prior to the referendum vote. The Town then put the question of the acquisition out to permissive referendum, which is the only question it is legally authorized to submit to such referendum.

Respectfully,

COUGHLIN & GERHART, LLP

By  Nathan D. VanWhy
Partner