

A Special Meeting of the Town of Avon was held on Monday, September 29, 2008 at 6:00 P.M. at the Avon Village Hall with the following members present:

PRESENT: Supervisor David LeFeber, Deputy Supervisor Kelly Cole, Councilmen Donald Cook, James Blye, and Thomas Mairs

OTHERS: Bernard Donegan, Inc. Representative Chuck Bastin, Supervisor Secretary Mary Blye, and Town Clerk Sharon Knight

VISITOR: Avon Preservation & Historical Society Representative Robert Westfall

Supervisor LeFeber called the meeting to order at 6:05 P.M. by reading the following legal notice.

TOWN OF AVON  
LEGAL NOTICE

A special meeting has been scheduled for Monday, September 29, 2008 at 6:00 P.M., at the Village Hall, 74 Genesee Street Avon, New York, 14414 for the purpose of discussion of the Opera Block.

By order of the Supervisor of the Town of Avon, Livingston County, New York  
Sharon M. Knight, CMC/RMC, Avon Town Clerk

Dated: September 26, 2008

DISCUSSION  
OPERA BLOCK

Supervisor LeFeber introduced Chuck Bastian and requested he address the Board regarding the Opera Block.

Chuck Bastin reported our BAN (bond anticipation note) is due March of 2009. He provided two spread sheets – Cost of Opera Block Project including the probable costs and grants received, probable cost to taxpayers and financing authorization and an updated timeline from January 11, 2007 to December 15, 2022. The numbers that are of concern include estimated maximum costs, plan of financing, and grants. The bids have come in about 2.5 million just for the construction costs. The Board can not unauthorize what has already been borrowed.

Chuck asked which grants are committed and when they are expected to come in. Supervisor's Secretary Mary Blye stated all grants have signed contracts except for the grant provided by Senator Volker. Senator Volker's are not technically committed as the others have been. The Senator's office will be contacted to see if we could receive the money early.

Supervisor LeFeber stated he had requested the Architect attend this meeting and is sorry the Architect is not in attendance. Mr. Bastin stated the architect knows the project and

designs and she could answer the “What if questions”. First is if you can as a Board proceed knowing the contingency. Can you sign the contracts? Supervisor LeFeber stated we would need to continue to be in constant communication with Karen Ferguson and work with Senator Volker to get a signed agreement. Second timing is what affects Plan B in terms of cash flow and the Architect must answer this question.

Deputy Supervisor Cole provided two cash flow charts showing the expenses and income through a monthly spending plan. The Board reviewed the charts and Deputy Supervisor Cole stated Architect DeMarle has spoken with the low bidder and this is the best option they could work out.

There was discussion of revenue anticipation notes (RAN) that could be taken out of a working capital fund (for such things as meeting payroll); however, RAN's are for working capital situations. Also revenue anticipation notes are issued when revenues are to be received within a fiscal year therefore they are not for this situation. RANS are used primarily for school district in situations such as it's April and the school is waiting for school state aid to come in. The law is written especially for these types of situations. In the case of the Opera Block there is nothing written in the law. RANS can not be rolled just as tax anticipation note – moneys are expected to come in.

Two choices could be intra-fund loans from General Fund A & B and Highway. There is money that is earmarked and due to December of 2009. Supervisor LeFeber stated the Highway Fund is unstable due to fuel and other costs related to oil. The first interest payment is in March of 2009 and then later in the year principal and interest.

Grant dollars would need to be received to be able to pay all obligations.

There was discussion on when it is appropriate to use the bell curve which is more for a summer project. The demolition and the installation of the elevator don't require a lot of material to be ordered.

Board members shared their views regarding the risks and not wanting to go backwards, an option would be to provided the Clerk of the Works discretion to reduce change orders, if the grants come in we would need to borrow less money than approved by the voters, we are moving forward by working with in good faith of the signed grant contracts, we need to make sure the grants are protected and if we changed the scope of the project we could loose a grant and we can not afford to loose any grants.

In Plan B no change orders would be allowed except if they were very small.

Supervisor LeFeber stated he is concerned of not having enough money to make payroll and feels a responsibility to have a solid plan. He has an interested in doing the project in phases as we receive the funding for each phase. He is uncomfortable with the scope of the project and continues to be very open to reason and options. Amend the authorization to get another ban would only serve as a temporary option.

If the grants come in we would need to borrow less money. We need to find a comfort zone and it will include some risk. An outstanding question would be if the people would let us borrow more money. It was suggested to continue to work in good faith and that the grants will come in. When the grants come in we will update our cash flow charts. We borrowed our BAN in March at 2.25 percent and we are making more than 2.25 percent on that money.

The worse case scenario is no additional grant money comes in, the contracts have been signed, we ask the voters to allow us to get another BAN and it doesn't get approved.

Today, we do not have the option of turning back to the old Town Hall as it has been cleared out to the base walls.

The resolution adopted on Thursday night must be rescinded as we have a BAN for more than what is in the amended resolution.

The resolution was discussed as follows:

Supervisor LeFeber stated to avoid the financial risk it would be best to ask the voter right now for the increase in the maximum amount to be spent. He does not want to find the Town unable to pay the employees and other bills due to a shortfall in receiving grant dollars that have signed contracts. The cash flow is his concern. Deputy Supervisor Cole stated the building would be sold to be able to pay our employees. There are no guarantees moving forward. Board members stated if it were to be turned down by the voters then we would lose the grants that we have signed contracts with. Those providing us with grants came here and made the announcements on our door steps and there is a concern that no one would give you future grants. There is not a zero risk and everyone's decision is one of five. Councilman Mairs agreed with those statements.

These are risky decisions; however, we were elected to make tough decisions and the record is going to show all of the options that were considered. Options include betting on good faith of the signed contracts rather than a 3.8 million permissive referendum or an additional ban in June of 2009.

There are also additional grants that can be applied for and the \$668,000.00 grant application that is currently being applied for highlights substantial energy savings. Once the project starts we can continue to apply for other grants. SMSI grants have changed their direction; however, in the future their direction will continue to change and we may be able to put together a good application.

Supervisor LeFeber stated we have 1.7 million and the contracts are higher, once again he suggested completing only the portion of the project that we have the money for as the only other money available is fund balance.

Deputy Supervisor Cole provided a phone to Chuck Bastin with Attorney Justin Miller of Harris Beach on the line. Chuck then report that Tim McGill has prepared the documents with the Estoppel and Justin Miller states that you do not have to wait for the Estoppel period and the decision is for the Board to make. Justin Miller would then need to be there to defend the Board position, if needed. It was suggested to get the legal opinion in writing. Deputy Supervisor Cole suggested putting the two guys together to decide if the estoppel period is necessary.

Councilman Blye stated that if we publish the legal notice and the thirty days pass then the estoppel period would more than likely go by without challenge.

Councilman Cook questioned if all of the contractors have been notified and Deputy Supervisor Cole stated there is a letter of intent and on November 3<sup>rd</sup> we can move forward the bidders need to be ready.

Supervisor LeFeber stated the 2009 tentative budget will be increased as there is a payment due December 31, 2009 of principle and interest even if BAN has not been turned into Serial Bonds. If not paid there would be a double hit in 2010. Increasing the budget to the projected 54 cents per thousand is a seven percent increase in the budget and it appears to be the recommendation of the entire Board.

A request will be made of the Architect to be prepared to make recommendations and negotiate with a contractor to reduce the project if necessary. Also it is necessary to keep the Architect up to date on the flow chart for deadlines and just in case we need to delay payment for something.

Deputy Supervisor Cole stated the records storage area and geothermal are two items that could be removed. He suggested to moving on and see where we are in March.

The Board requested the Town Clerk to published the legal notice in our legal paper even if was to be placed as an advertisement.

RESOLUTION #174

RESCIND RESOLUTION #164 ADOPTED SEPTEMBER 25, 2008

On motion of Councilman Mairs, seconded by Councilman Cook the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to rescind Resolution #164 adopted September 25, 2008.

Supervisor David LeFeber	voting	AYE
Deputy Supervisor Kelly Cole	voting	AYE
Councilman Donald Cook	voting	AYE
Councilman Thomas Mairs	voting	AYE
Councilman James Blye	voting	AYE

RESOLUTION #175

AMENDED AND RESTATED BOND RESOLUTION DATED SEPTEMBER 25, 2008

On motion of Councilman Cook, seconded by Councilman Blye the following resolution was

ADOPTED BY A ROLE CALL VOTE AYES 5 NAYS 0

AMENDED AND RESTATED BOND RESOLUTION DATED SEPTEMBER 29, 2008 OF THE TOWN BOARD OF THE TOWN OF AVON, NEW YORK, AUTHORIZING GENERAL OBLIGATION SERIAL BONDS TO FINANCE CERTAIN CAPITAL IMPROVEMENTS, AUTHORIZING THE ISSUANCE OF BOND ANTICIPATION NOTES IN CONTEMPLATION THEREOF, THE EXPENDITURE OF SUMS FOR SUCH PURPOSE, AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the Town, acting as lead agency under the State Environmental Quality Review Act and the applicable regulations promulgated thereunder ("SEQRA"), has completed its environmental review and, on January 11, 2007, has duly issued a negative declaration and has determined that the implementation of the action as proposed will not result in any significant adverse environmental impacts; now therefore, and

WHEREAS, the Town, having previously, on June 28, 2007, adopted a bond resolution containing a projected maximum aggregate cost of \$2,419,290, the plan set forth in the said previous resolution for financing of said purpose was to provide up to \$1,739,290 of such maximum cost by the issuance of obligations as therein authorized, with the balance to be provided from grants received, then estimated to be up to \$680,000, with such grant funds to be expended for the Opera Block Building improvements; and

WHEREAS, the Town having determined that the total project costs will exceed the previous estimate by approximately \$660,710 due to the inclusion of geo-thermal heating and increased cost of materials and labor as part of the project but that the amount to be financed by the Town and paid for by the taxpayers will be substantially less due to grants received from other sources; now, therefore, be it

RESOLVED BY THE TOWN BOARD OF THE TOWN OF AVON, NEW YORK (hereinafter referred to as the "Town"), by the favorable vote of not less than two-thirds of all of the members of such Board, that the terms of the previous bond resolution adopted by the Board on June 28, 2007 are hereby amended and restated as follows:

Section 1. The Town of Avon shall undertake certain capital improvements consisting of reconstruction of the Opera Block Building and the Town Hall Building at 17-27 Genesee Street in the Town of Avon, New York, site and other incidental improvements in connection therewith and the acquisition of original furnishings, equipment, machinery or apparatus that may be required in connection therewith for such construction and Town use (hereinafter referred to as “purpose”), and general obligation serial bonds in an aggregate principal amount not to exceed \$1,739,290 and bond anticipation notes in anticipation thereof (and renewals thereof) of the Town are hereby authorized to be issued to finance said purpose.

Section 2. The estimated maximum aggregate cost of said purpose, which may include preliminary costs and costs incidental thereto and costs of the financing thereof, is estimated to be \$3,080,000 and said amount is hereby appropriated therefor. The plan for financing of said purpose is to provide up to \$1,739,290 of such maximum cost by the issuance of obligations as herein authorized, with the balance to be provided from grants received, presently estimated to be up to \$1,680,000, with such grant funds to be expended for the Opera Block Building improvements, such bonds and grants in the aggregate not to exceed the maximum cost amount authorized herein.

Section 3. It is hereby determined and declared that (a) such building being a class “B” (fire-resistant) building as defined in Subdivision 11 of Paragraph a of Section 11.00 of the Local Finance Law, and said purpose is one of the class of objects or purposes described in Subdivision 12(a)(2) of Paragraph (a) of Section 11.00 of the Local Finance Law, and that the period of probable usefulness of said purpose is fifteen (15) years, (b) the proposed maximum maturity of said bonds authorized by this resolution will be in excess of five years, (c) current funds required to be provided prior to the issuance of the bonds or notes herein authorized, pursuant to Section 107.00 of the Local Finance Law, to the extent applicable, if any, will be provided, (d) the notes herein authorized are not issued in anticipation of bonds for an assessable improvement, and (e) there are presently no outstanding bond anticipation notes issued in anticipation of the sale of said bonds.

Section 4. The bonds and notes authorized by this resolution shall contain the recital of validity prescribed in Section 52.00 of the Local Finance Law and such bonds and notes shall be general obligations of the Town and all the taxable real property in the Town is subject to the levy of *ad valorem* taxes to pay the principal thereof, and interest thereon, without limitation as to rate or amount.

Section 5. It is hereby determined and declared that the Town reasonably expects to reimburse the general fund, or such other fund as may be utilized, not to exceed the maximum amount authorized herein, from the proceeds of the obligations authorized hereby for expenditures, if any, from such fund that may be made for the purpose prior to the date of the issuance of such obligations. This is a declaration of official intent under Treasury Regulation §1.150-2.

Section 6. The power to further authorize the sale, issuance and delivery of said bonds and notes and to prescribe the terms, form and contents of said bonds and notes, including, without limitation, the consolidation with other issues, the determination to issue bonds with substantially level or declining annual debt service, all contracts for, and determinations with respect to, credit or liquidity enhancements, if any, and to sell and deliver said bonds and notes, subject to the provisions of this resolution and the provisions of the Local Finance Law, is hereby delegated to the Town Supervisor, the Town's chief fiscal officer. The Town Supervisor and the Town Clerk or Deputy Clerk are hereby authorized to sign by manual or facsimile signature and attest any bonds and notes issued pursuant to this resolution, and are hereby authorized to affix to such bonds and notes the corporate seal of the Town of Avon.

Section 7. The faith and credit of the Town of Avon, New York, are hereby irrevocably pledged for the payment of the principal of and interest on such bonds and notes 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 obligations becoming due and payable in such year.

Section 8. After compliance with Section 9 hereof, this resolution shall be published in full by the Town Clerk of the Town of Avon together with a notice in substantially the form prescribed by Section 81.00 of said Local Finance Law, and such publication shall be in each official newspaper of the Town, in the manner prescribed by law. The validity of said bonds and bond anticipation notes issued in anticipation of the sale of said serial bonds, may be contested only if such obligations are authorized for an object or purpose for which said Town is not authorized to expend money, or 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 (20) days after the date of such publication; or if said obligations are authorized in violation of the provisions of the Constitution.

Section 9. This resolution is subject to a permissive referendum of the qualified electors of the Town of Avon, pursuant to Section 35.00 of the Local Finance Law.

The motion having been duly seconded, it was adopted and the following votes were cast:

Supervisor David LeFeber	voting	AYE
Deputy Supervisor Kelly Cole	voting	AYE
Councilman Donald Cook	voting	AYE
Councilman James Blye	voting	AYE
Councilman Thomas Mairs	voting	AYE

On motion of Councilman Blye, seconded by Councilman Mairs, the meeting adjourned at 8:20 P.M.

Respectfully submitted, \_\_\_\_\_ by  
Sharon M. Knight, CMC/RMC, Town Clerk