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**DECISION AS TO LEGAL SUFFICIENCY OF THE
VILLAGE INCORPORATION PETITION FOR THE
VILLAGE OF ATERES**

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TOWN OF THOMPSON

On June 14, 2023 the Towns of Thompson and Fallsburg were served simultaneously with duplicate original Incorporation Petition's in accordance with Village Law §2-202(f)(1) for the proposed Incorporation of the Village of Ateres. Said submission consisted of fifty-six (56) pages and a cover letter which contained a Petition and three (3) Exhibits, consisting of a proposed description of the Incorporation territory, signature pages of the Petition and a list of names and addresses of the regular inhabitants of the incorporation territory.

Upon receipt of the aforesaid Petition the Supervisors of the Towns of Thompson and Fallsburg scheduled a Joint Public Hearing to take place on August 3, 2023 at Yeshiva Viznitz, 251 Barnes Road, Kiamesha Lake, Town of Thompson, Sullivan County, New York, located within the proposed incorporation territory. Said Notice of Public Hearing was posted and published pursuant to Village Law §2-204.

A Joint Public Hearing was conducted by Supervisors Rieber and Rappaport on August 3, 2023 and said Public Hearing was continued on August 22, 2023, both taking place at Yeshiva Viznitz, 251 Barnes Road, Kiamesha Lake, New York 12751. At the close of the Public Hearing on August 22, 2023, the Supervisors kept the Public Hearing open only for written comments and objections through the end of business on August 23, 2023, at which time the Joint Public Hearing was deemed closed for all purposes.

During the Joint Public Hearing and comment period, the Towns of Fallsburg and Thompson received written objections from approximately one hundred (100) residents of the Towns and one hundred ninety-nine (199) pages of written objections, as well as

hearing testimony from over a dozen residents over the course of both Joint Public Hearings.¹

After careful review and consideration of the Incorporation Petition, signature pages and exhibits, the written legal objections submitted by the residents of the Towns of Thompson and Fallsburg, the Public Hearing comments, as well as consideration of Petitioner's responses to Public Objections submitted by counsel to the Petitioner dated August 22, 2023 and August 28, 2023 and as such, I have determined that the submitted Petition for Incorporation of the Village of Ateres is in compliance with all of the requirements of Article 2 of Village Law and therefore, the process for incorporation of the Village of Ateres under Article 2 of the Village Law can proceed.

The reasons on which this Decision is based are the following:

(1) The submitted description of the territory to be incorporated is sufficient to identify the location and intent of the proposed Village with common certainty.

We received numerous objections regarding the maps submitted with the Petition as well as in reference to the metes and bounds description. The submitted metes and bounds description was prepared and certified by Ausfeld & Waldruff Land Surveyors, LLP, licensed land surveyors. The Petition also contained a map signed and sealed by a licensed surveyor. Petition submissions pursuant to Village Law §2-202(c)(1) are required to have a description in one of the following forms, or a combination thereof, (a) a metes and bounds description (b) a description made with reference to existing streets and navigable waters, or a combination of same, or; (c) a map showing existing streets and navigable waters or a combination of same forming boundaries or metes and bounds or the

¹ The Towns received numerous communications from persons who did not want to sign written comments or provide home addresses as required by the Village Law §2-206(3) for fear of retaliation. There was a belief that the requirement of written objections with names, addresses and signatories of the objector violated their constitutional rights of Free Speech as protected by the First Amendment to speak and object at a public hearing for fear of being sued for exercising their rights (per Village Law §2-204). This statutory requirement thwarted numerous people

entire boundaries of one or more districts of an entire town. The Petition contains a metes & bounds description certified by a licensed surveyor. I have been advised by counsel that the description is not required to decide the precise boundaries of the proposed Village, it only requires common certainty of the boundaries and the certified metes and bounds description does provide a common certainty as to what the proposed boundaries are of the proposed Village. While it is recommended that a precise map should be prepared prior to filing same with the County Real Property Tax Service in order to assure all boundaries accurately close, the provided metes and bounds description does provide enough common certainty to know what the proposed boundaries of this new Village are. Many objections to the Petition received during the Public Hearing comment period state the maps submitted with the Petition were unclear and impossible to read and that accurate boundaries were not contained within the description. While we agree that the provided maps, as submitted, lack some clarity, I disagree regarding the certified metes and bounds description as that provides enough common certainty as to the boundaries of the proposed Village to comply with the requirements under Village Law §2-202(c)(1).

2. *The Petition submitted establish "at least twenty percent (20%) of the residents of such territory qualified to vote for Town officers in a Town in which all or part of such territory is located" pursuant to Village Law §2-202(1)(a)(1).*

Petitioners indicate that there are three hundred eight (308) residents of the incorporation territory who are qualified to vote in the Town of Thompson and fourteen (14) residents qualified to vote in the Town of Fallsburg for Town officers which requires a total of at least sixty-five (65) qualified voters to sign the Petition. After reviewing the signatures with records from the Sullivan County Board of Elections, there were nineteen (19) signatures of persons who were registered to vote in either multiple election

from being willing to participate in the Public Hearing process, which was made clear to us on numerous occasions by multiple people.

jurisdictions or election districts other than Sullivan County. These people are not qualified voters for purposes of voting for public officers within the Town of Thompson or Town of Fallsburg. As such, these signatures cannot count as qualified voters since they can claim to vote in jurisdictions other than the Towns of Fallsburg or Thompson.

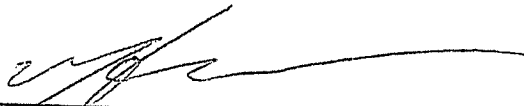
Furthermore, page 1 of the signature Petitions filed was improperly completed as it failed to include the number of signatures on the authentication and thus all five (5) signatures must be invalidated for that sheet on procedural grounds pursuant to Village Law §2-202(e)(4).

There were fourteen (14) Petition signers who, per the Board of Election records, are not registered to vote anywhere within New York State. One of unregistered signors is also listed as a minor on the Petitioners List of Inhabitants and, thus, would be unqualified to vote at this time. It should be noted that being "qualified to vote" does not require a resident to be registered to vote. Qualified to Vote requires an individual be 18 years of age or older, residents of the Towns of Thompson or Fallsburg; are not in prison for felony convictions; have not been adjudged mentally incompetent, nor can claim to vote elsewhere. Since there is no way to confirm the qualifications of these thirteen (13) unregistered voters, and the burden of proving un-qualification would be on the Town's to show, these signors cannot be excluded as unqualified. Therefore, at most, there are twenty-five (25) Petition signors that should not be counted, leaving seventy-four (74) valid signors of the Petition which, complies with Village Law §2-202(1)(a)(1) by having at least 20% of the residents of such territory qualified to vote for Town Officers sign the Petition.

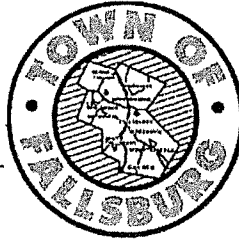
Finally, although the Petition was signed by ninety-four (94) people all on March 30, 2023, and the metes and bounds description contained in the Petition is dated April 24,

2023 and the attached map was dated April, 2023, it was affirmed by the witness, Naftola Neiman, that he had all parcel information as well as the map with him and was made available and provided to all before they signed the Petition and that the same maps and parcel information was provided to the surveyor to prepare the metes and bounds description and map. Furthermore, the proposed boundary map was posted in advance. Accordingly, the ministerial signing and dating of the map did not change the ability to view same and allow all Petition signors to be familiar with the boundaries of the territory sought to be incorporated. Thus, I am satisfied that the requirements in Village Law §202(e)(2) have also been satisfied.

Accordingly, based on the foregoing reasons I must conclude that the submitted Petition for the Incorporation of the Village of Ateres does comply with the requirements of Article 2 of Village Law.



WILLIAM J. RIEBER
Supervisor/Town of Thompson



**TOWN OF FALLSBURG TOWN SUPERVISOR
DECISION AS TO LEGAL SUFFICIENCY OF THE
PETITION TO INCORPORATE THE VILLAGE OF ATERES**

On June 14, 2023, a village incorporation petition to incorporate the proposed Village of Ateres was filed with the Clerks of the Towns of Fallsburg and Thompson. The incorporation petition was filed pursuant to Article 2 of the state Village Law, which governs the Village incorporation requirements and procedure. Upon receipt of the incorporation petition, the Supervisors of the Towns of Fallsburg and Thompson scheduled a joint public hearing for August 3, 2023, at 5:00 PM, at Yeshiva Vivnitz, 251 Barnes Road, Kiamesha Lake, Town of Thompson, New York, which is located within the proposed incorporation territory. The notice of public hearing was published and posted pursuant to Village Law §2-204. A joint public hearing was conducted by Supervisors Rieber and Rappaport on August 3, 2023, and was continued at the same location and time on August 22, 2023. The Supervisors closed the public hearing, but subject to allowing the submission of additional written comments and objections through the close of business on August 23, 2023, at which time the joint public hearing was closed for all purposes.

The Towns of Fallsburg and Thompson received objections from approximately one hundred (100) residents of the Towns, consisting of approximately 200 pages of written comments and legal objections and heard testimony from 14 residents through the two evenings of the joint public hearing.

After careful review and consideration of the incorporation petition, signature pages and exhibits, the written legal objections submitted by residents of the Towns of Fallsburg and Thompson, the public hearing comments and two letters submitted by the petitioners' attorney, and after consultation with counsel, I have determined that the petition complies with the requirements of Article 2 of the state Village Law.

The Village Law §202(1)(c)(1) requires that the petition contain a "description of such territory sufficient to identify the location and extent of such territory with common certainty and which shall be in one of the following forms or combination thereof". One of those forms of description is a metes and bounds description. The description contained in the petition is a metes

and bounds description prepared by Ausfeld & Waldruff Land Surveyors LLP, licensed land surveyors. The petition also includes a map signed and sealed by a licensed surveyor. The Town Supervisors received many public comments objecting to the metes and bounds description and map on the grounds that they were unclear, illegible and that the boundaries of the proposed village could not be determined. Counsel advises me that the description is not required to describe the precise boundaries of the proposed village. Since the metes and bounds description is prepared by a licensed surveyor and the map is signed and sealed by a licensed surveyor, on advice of counsel, I determine that the description complies with the statutory requirement.

The Village Law §202(e)(2) requires that each signature page contain the prefatory “statement . . . of the petitioners’ familiarity with the content and purpose [of the petition] and the boundaries of the territory sought to be incorporated.” I note that 94 of the petitioners signed the petition on March 30, 2023, whereas the metes and bounds description contained in the petition is dated April 24, 2023, and the map contained in the petition appears to be dated April 2023, raising an inference that those petitioners, when they signed the petition, were not familiar with the boundaries of the proposed village. However, I have reviewed an affirmation affirmed on September 7, 2023, by Naftula Neiman, who carried the petition and signed the Authentication/Witness Affidavit for all the signors of the petition. Mr. Neiman states in his affirmation that in February 2023 he prepared a list of the parcels in the two Towns (organized by Tax Map No.) intended for inclusion in the proposed village and a map showing the boundaries of the proposed village, and before each person signed the petition, he showed each signor the parcel list and the map of the boundaries of the proposed village. Mr. Neiman’s affirmation also states that the parcel list and map that he prepared and showed to each of the signors was the same parcel list and map that was provided to the surveyor who prepared the formal metes and bounds description and map that were contained in the petition filed with the Towns. Mr. Neiman’s affirmation also affirmatively states that because he personally showed each of the signors the parcel list of the territory sought to be incorporated and the map of the boundaries of the proposed village before they signed the petition, that each of the signors was familiar with the boundaries of the territory sought to be incorporated at the time they signed the petition. Therefore, after consultation with counsel, I determine that the petitioners were ‘familiar with’ the boundaries of the proposed village when they signed the petition and determine that the petition complies with Village Law §202(e)(2).

The Village Law §202(1)(a)(1) requires that the petition be signed by “at least twenty percent of the residents of such territory qualified to vote for town officers in a town in which all

or part of such territory is located.” Based on the petition, there are 308 residents of the proposed incorporation territory who are qualified to vote in the Town of Thompson and 14 residents in the incorporation territory who are qualified to vote in the Town of Fallsburg. Ninety-nine (99) persons signed the petition. I note first that the phrase “qualified to vote” does not require that a resident be registered to vote. However, if a person is registered to vote in more than one jurisdiction, that person is not qualified to vote. Therefore, nineteen (19) signatures must be invalidated because those signatories are either not registered to vote in the Town of Fallsburg or Town of Thompson or are registered to vote in more than one jurisdiction. In addition, since the first page of the signature pages in the petition does not state the number of signatures in the Authentication, the five (5) signatures on that page must be invalidated. One additional signature must be invalidated, because the petition’s list of regular inhabitants lists that person as a minor. There are also questions regarding signatures that are not complete or are difficult to read. However, given the explanations in the petitioners’ attorney’s August 28 letter, and upon advice of counsel, I do not believe that those signatures should be invalidated. Since there are 74 acceptable signatures on the petition, which is 24% of the residents of the proposed incorporation territory who are qualified to vote, I determine that the number of acceptable signatures complies with the statute.

I determine that the petition to incorporate the Village of Ateres complies with the requirements of Article 2 of the state Village Law.

Dated: September 7, 2023



Katherine Rappaport, Town Supervisor
Town of Fallsburg

