



MEMORANDUM

TO: Town of Canandaigua Town Board
Town of Canandaigua Town Manager
Town of Canandaigua Town Clerk

CC: Kevin Saunders, Esq.
Dana Campbell, Esq.
Dan O'Brien, Esq.

FROM: Town Attorney Chris Nadler

DATE: March 5, 2021

RE: 4351 Tichenor Point

A. INTRODUCTION. This memorandum will address certain issues that have arisen in relation to the potential purchase of real property located at 4351 Tichenor Point (“Property”) for use as a public park, as well as proposed timing for a special election. The information contained herein is based on the information I have to date, and is set forth in an effort to comply with my instructions from the Town Board for:

- (i) Complete transparency in this process
- (ii) Fairness to the Kellogg Family
- (iii) Fairness to all Town residents

B. EASEMENTS AND DEED RESTRICTIONS. I have reviewed the updated abstract of title and survey provided by Sellers. Based on this review, it is my opinion that the recorded easements and restrictions to which the Property is subject will not affect the Town’s ability to use the Property as a public park.¹

C. DISCUSSIONS OF CONCERNS WITH INTERESTED ATTORNEYS. I have discussed the matter with counsel for sellers and they concur with the assessment stated above. I have attempted to discuss the matter with counsel for the neighboring property owners and have been informed that before

¹ This memorandum shall not function as any form of title insurance and does not render any opinion as to the actions of neighbors in relation to these easements, restrictions, or any potential lawsuit related to access or use of the property or the adjacent parcels.

conversations can take place to refine or supplement the concerns conveyed in his January 27, 2021 letter the Town needs to be “more forthcoming about its plans for development, the contract which we were told was being amended, the referendum, and other aspects of the proposed acquisition and park development which have not yet been disclosed.”

D. SCHEDULE FOR SPECIAL ELECTION.² New York State Town Law § 91 was recently amended to require that a permissive referendum election under Town Law Article 7 be held not less than 90 nor more than 105 days after the resolution under § 94 was adopted. Since this would add an additional month to the previously discussed timeline, I would recommend conducting a special election pursuant to New York State Town Law Article 6. The Town Board is specifically authorized under Town Law § 81(1)(c), on its own motion, to cause to be submitted at a special town election a proposition to establish public parks or to acquire the necessary lands therefor. The timing of such a special election could be as follows:

1. March 8, 2021: Informational Meeting at which the Town Manager and Town Board will present information and address the questions that have been raised related to the potential purchase of the Property.
2. March 9, 2021: Amend Purchase and Sale Contract to allow for special election pursuant to Town Law Article 6.
3. March 15, 2021: Town Board adopts resolution setting special election.
4. April 19, 2021: Town Board adopts required election resolutions.
5. May 3-7, 2021: Voter Registration.
6. May 20, 2021: ELECTION DAY.
7. May 21, 2021: Results certified to Town Clerk.
8. June 1, 2021: CLOSING ON PROPERTY.

E. CONCLUSION. I hope this memorandum is helpful for all interested parties. As always, I am available to answer any questions from the Town Board or provide additional information if needed.

***PLEASE POST ON TOWN'S WEBSITE AND MAKE
AVAILABLE TO TOWN RESIDENTS UPON REQUEST***

² The schedule set forth herein is a POSSIBLE scenario. While the timeframes are realistic and based on the requirements contained in NYS Town Law, all DATES ARE SUBJECT TO CHANGE