

To: Mr. Richard Moore  
CC: Members of the Fort Ann Town Board  
From: Darlene Z. Dumas, Supervisor  
Re: Your Questions  
Date: April 14, 2014

You have posed the following seven questions. My answers follow each question. Quotations from Town Minutes or Comptroller opinions are indented and italicized.

**1. Is the dam properly insured? Specifically, if the dam were to breach again, would it be insured for 100% of any loss minus any deductible?**

At the March 10<sup>th</sup> Town Board meeting, the Town's insurance agent verified that the dam has been fully and properly insured since I was first elected Supervisor. Each year, I ask the Engineer for the company that inspects the dam for his professional opinion regarding the amount of coverage required for the dam. I then work with our insurance agent to obtain that coverage in the most cost-effective manner. Last year, the dam was insured for more than \$4 million. This year, coverage was increased to \$5 million. These amounts are not pulled out of thin air but are instead based upon professional advice.

**2. The deductibles on the dam. Darlene said she was going to contact the insurance broker to review the deductibles, but never did. I did send her all of the info she needed to have regarding this matter.**

As noted above, I confer with both the Engineer who does the inspection of the dam for the Town and the Town's insurance agent each year regarding the insurance for the dam. Your statement that we had not reviewed the deductibles is simply incorrect. Furthermore, at the March 10<sup>th</sup> Town Board meeting, the Town's insurance agent addressed the issue of raising the deductible on the dam. At the current time, the deductible on the dam is \$25,000. Raising the deductible to \$100,000 would save the Town a small amount of money per year (approximately \$3,000) while significantly increasing the Town's exposure in case of a problem at the dam. In our agent's professional judgment, the Town has made the correct choices in terms of insuring the dam. I concur.

**3. Questions about Hadlock financials. Helen Denno offered to meet with Darlene & me to discuss my concerns. I accepted Helen's offer, but Darlene never would set up the meeting.**

If you would like to submit to me a short list of reasonable questions, I will ask Ms. Denno to produce a report that contains the answers to any questions that she is able to answer within two weeks of receipt of the questions. The report will be posted on the website for all to see.

**4. Questions for OSC resulting from the meeting Darlene & I had at the Log Jam last April.**

I contacted the Comptroller's office and they told me to contact the Attorney for the Town. This, of course, was what I had been doing ever since my election as supervisor.

**5. Mishandling of checks by Aspland. Why wasn't Aspland held accountable to pay the Lake Hadlock Park District residents back the lost interest?**

I cannot and will not try to guess the motivation behind the actions of a former Supervisor and a former Town Board. I can only trust that they asked Mr. Aspland to hold the checks for reasons that they felt were proper.

The interest rate paid on savings accounts by Glens Falls National at the time in question was approximately 0.1%. The total amount in question was \$420,000. The time period during which the checks were held by Mr. Aspland's firm was approximately two months. As a point of information, we asked Glens Falls National Bank how much interest would have accrued if the checks had been deposited in the Town's account promptly after receipt by the prior supervisor. The bank indicated that the total amount of interest that would have been earned for that period would have been \$49.90. Mr. Aspland's firm did not charge the Town for holding the checks and, frankly, neither I nor the Town Board even considered asking Mr. Aspland for the \$49.90 of interest that would have accrued during the prior Supervisor's term.

After my election as Supervisor, I obtained the checks and deposited them in the bank.

**6. Why did the Lake Hadlock Park District residents have to pay approximately \$48,000.00 in additional interest on the last 3 BANs due to an error made by the Town's law firm, ambiguity in when the BAN could be paid in full, in drafting the documents? Why wasn't Aspland's firm made to pay for its errors?**

First, the basic premise behind your question is incorrect: no one paid any "additional interest" on those BANs.

Second, the events in question happened before I was elected Supervisor. I will not try to guess why the prior Town Board and prior Supervisor made the decisions they made.

Third, the official Confirmation Sheets for the renewal of the three BANs clearly state that none of the associated three notes were subject to redemption prior to maturity, reflecting the policies of the financial institutions that issued the notes. There is no ambiguity in the documents nor were there any errors in drafting them. The interest paid was the interest due and it could not have been reduced through prepayment.

Fourth, the entire question is moot, since the Town would never have prepaid the money since it didn't have the funds to do so.

**7. Why isn't she (Darlene) willing to tell us what New York state law & a whole bunch of other laws caused her to give 100% of the Town's liability for the Dam, which the Town owns, to the Lake Hadlock Park residents?**

You already know the answer to this question. It was discussed fully during the August 13, 2012, Town Board meeting – a meeting that you attended. The minutes of that meeting (available online) contain the paragraph copied below. You also know, that from all of the information that I received from you, I was sympathetic to the District's plight and thought that it would be fair to have the entire Town share the debt but our attorneys were clear: any attempt to do that by the Town would have been illegal and would have incurred additional legal liability for the Town:

*Supervisor Dumas spoke on the Bond issue, i.e. Bond Anticipation Note ("BAN") for payment of Hadlock Pond Dam breach in 2005. The current BAN expires August, 2012. Ms. Dumas suggested taking out a long-term bond instead of a year-to-year BAN, which has been done. An information sheet was distributed to Ms. Denno, Town Attorney and Supervisor Dumas. Moody's Investors Service has rated/considered the Town an A1 town with a 3% interest rate. This would be a bond at 3% for 23 years. The price for the district was paying for the loan was \$235,000.00 a year but now the amount will be \$110,000.00 a year. If the loan was paid off earlier, the Town would be penalized. After 7 years, it could be paid off without penalty. The Town is liable for 23% of claims against the Town. If settlement is made, not by a trial, the Town is responsible for 23%. Legally, the Town cannot pay and is not going to pay the 23% of the \$1,690,000.00. A question to the Supervisor was if the Town could gift the money and pay the loan. The answer was the Town cannot do this. In 2006, 2 resolutions stated the District is obligated to pay the debt. Morally, the Supervisor believes the Town should be paying, not the Hadlock District. Supervisor has asked if the Town pays the 23%, the Town would have to create a new BAN resolution and the Town would have to go through the BAN process again. Richard Moore, Summer Way, Fort Ann, NY spoke on the BAN. Supervisor stated the Town should contribute but cannot, according to the NYS Law.*

The Town's requirement to assign the 23% to the District, based on the resolutions passed by prior Town Boards, was clear. Furthermore, even without those resolutions, NY Town Law prevents the Town from paying for improvements or replacements to damaged facilities within a park district with monies taken from the Town's general fund. The NYS Office of the Comptroller has released official opinions that are directly to this point. The following quotations are taken from a 2008 Office of the Comptroller opinion:

*"The costs of construction of additional facilities or reconstruction or replacement of obsolete, inadequate, damaged, destroyed or worn out facilities, undertaken in an existing town park district pursuant to the authority in Town Law § 202-b, are charged against the properties within the park district on an ad valorem basis, and are not general town expenses payable out of the town's general fund."*

*"Town Law § 202 relates to the manner in which expenses for town special district improvements are raised. Town Law § 202 (3) provides that the expenses of establishing and providing the improvements for a park district "shall be assessed, levied and collected from the several lots and parcels within the district" in the same manner and at the same time as other town charges (i.e., on an ad valorem basis) (11 Ops St Comp No. 7841, at 744).<sup>2</sup> Further, Town Law § 202-b (1) provides that costs or expenses incurred pursuant to that section "shall be a charge against the district and assessed, levied and collected in the same manner as other charges against that particular district." (see also Town Law § 202 [4], 202-a). Thus, the costs of the initial improvements for a newly-created park district, as well as the costs of construction of additional facilities or reconstruction or replacement of obsolete, inadequate, damaged,*

*destroyed or worn out facilities, undertaken in an existing park district pursuant to the authority in Town Law § 202-b, are charged against the properties within the park district on an ad valorem basis.”*

*“Moreover, a town may not, by the adoption of a local law, provide for the use of general fund money for this purpose. Articles 12 and 12-A of the Town Law establish a comprehensive legislative scheme evincing an intent to pre-empt local laws relating to the establishment, financing and operation of town improvement districts (see Coconato v Town of Esopus, 152 AD2d 39, 547 NYS2d 953, lv denied 76 NY2d 701, 558 NYS2d 891; 2001 Ops St Comp No. 2001-7, at 11; 2000 Ops St Comp No. 2000-17, at 44; 1992 Ops St Comp No. 92-33, at 84). In addition, although the Municipal Home Rule Law authorizes a town to adopt local laws that supersede, in certain respects, provisions of the Town Law in its application to the town (Municipal Home Rule Law § 10 [1] [ii] [[d] [3]), there is an express restriction on this home rule authority with respect to provisions relating to a “special or improvement district” (Municipal Home Rule Law § 10 [1] [ii] [d] [3] [3]). Therefore, a town may not, by local law, provide for the transfer of general fund monies to finance park district improvements.”*

The Attorney for the Town and the attorney for the Town’s insurance agency both made it clear that had the Board assigned the 23% to the entire Town the action would have been an illegal act contrary to Town Law. Further, any citizen of the Town outside of the District could have sued the Town – and won. Thus we were constrained by both the prior resolutions and the prior decisions of the Town that went into those resolutions and by NY Town Law. Our hands were tied and the actions that the Board took in this regard were the proper ones.

Because I was and am sympathetic to the people in the District, I tried to find a way to have the entire town share the debt but there were no options that we could find that wouldn’t immediately lead to new lawsuits.

Mr. Moore, you have asked this question repeatedly and continue to push for a different result but the actions the Town Board took were proper, legal and required by law.