



**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

A handwritten signature in dark ink, reading "Katherine J. Rappaport", written over a horizontal line.

Katherine Rappaport, Town Supervisor
Town of Fallsburg

