

**Town of Castleton
Special Select Board Meeting
Minutes of October 22, 2013
Castleton Town Offices**

MEMBERS PRESENT: Thomas Etori, Cristine Smith, John Hale, Wenger Rehlen, Edward O'Shea

MEMBERS NOT PRESENT: None

OTHERS PRESENT: Charles Jacien; see attached list

Meeting called to order at 6:08 by Chairman T. Etori with the Pledge of Allegiance

Work Session

J. Facey stated that at the November 5th public hearing, a statement was made by a member of the board stating that if one or the other of the 2 articles were voted down, the project would not move forward. He noted that the way the warning was worded, one article was not contingent on the other. However, he stated that the difficult is that somebody could challenge the town going forward stating that they were misled by the board into not challenging the vote because they would have thought there was no need to. He stated that to decide months later that the law says you can go forward is problematic.

Chairman T. Etori asked if it matter that the project is now closer to 1 million than the 1.2 million that was asked for. J. Facey stated that it does not since the principle is the same.

Chairman T. Etori asked at what point in time would a grievance have to happen if the board moved forward on the yes vote. J. Facey stated that the action could be challenged, and the statute of limitations is from when the town decides to go forward on the yet vote. Chairman T. Etori asked if going out to big would start the statute. J. Facey stated that it may be a slightly gray area, but at the point the board does something contractually-such as committing the town to go forward acting on the reliance of the yes vote, a challenge can be brought.

Chairman T. Etori asked how the board should proceed. J. Facey stated that the board cannot go out to vote with the same or a similar project more than twice in 365 consecutive days. To go out to vote more than twice, the project has to be substantially different. Chairman T. Etori asked if the \$990,000 would be different enough. J. Facey stated he would have to think about that and look at applicable case law. He noted that the bond banks are very conservative.

Chairman T. Etori asked if a different source for the money would make a difference. J. Facey stated that is not the criteria. The criteria is the project and whether it is the same or substantially similar.

E. O'Shea asked how the same location and building could be substantially different. J. Facey stated that they are ways it could be, but that the same location and square footage is not a good indicator.

Town Manager Jacien stated that the town cannot really vote on the project until the 365 days expires anyway. He asked if J. Facey could give a clean opinion to the bond bank. J. Facey stated that he cannot give a clean opinion on relying on the vote to go to the bond bank.

C. Smith asked what would happen if someone challenged the vote. J. Facey stated that a declaratory relief complaint would be filed. The applicant could ask for injunctive relief from proceeding any further with the project until a decision was made. He stated that even a declaratory relief complaint would probably prevent a clean opinion or getting funding from the bond bank.

J. Hale noted that the same project can be voted on twice within the 365 days, and this project has only been voted on once.

Chairman T. Ettori asked if the total project cost has to be in the warning. J. Facey stated that it does not, but has to be in the resolution. He also stated that the board would have to identify the sources of funding in an informational meeting.

Town Manager Jacien stated that the USDA has to approve the bid documents and plans if the funding comes from them. He also stated that the funding from the bond bank comes in the summertime.

E. O'Shea asked about the effect of the environmental court action. J. Facey stated that he was not aware of it. E. O'Shea asked if the vote was good, if the environmental court action would affect J. Facey giving a clean opinion. J. Facey stated that all he looks at is the bond vote. The USDA requires the opinion of municipal council regarding property rights. The bond bank does not require that opinion.

J. Hale asked what the action would be if someone sued the town. J. Facey stated that they would want the court to declare the informational meeting prejudiced proceedings and that the voters did not get to petition the re-vote because they didn't think the project could proceed. He stated that the judge could say the town could not proceed with borrowing, and ultimately that the vote was invalid.

J. Hale asked if giving this decision was difficult for J. Facey. He stated it was not. J. Hale cited an email from J. Facey in which J. Facey stated he did not know where this left the town. J. Facey stated that he does not know what a judge would say, but that someone could challenge and that he would not be comfortable giving a clean opinion.

J. Hale stated that he was looking at old minutes in which J. Facey stated that if one article failed; proceeding with the project was up to the discretion of the board. J. Facey stated that the board could have proceeded if not for the statements made at the informational meeting.

E. O'Shea stated that Chairman T. Ettori made the statement, but all members of the board agreed that the project would not go forward without two yes votes.

J. Hale stated that he feels the board should be able to change its mind since the board is in a different frame of mind now. J. Facey stated that the board could have changed its mind if not for statements made at the informational meeting.

Chairman T. Ettori stated that once the project is sent out to bid, they will have an accurate figure and then can ask for the right amount of money. He asked if the fact that the vote on the \$750,000 was by petition made a difference. J. Facey stated that the statute does not differentiate.

Town Manager Jacien stated that before going out to bid for USDA funds, the board needs to certify that they have the ability to move forward. He suggested looking at the bond bank for funding. Chairman T. Ettori directed Town Manager Jacien to bring both options at the next meeting.

J. Leamy stated that at the Select Board meeting prior to the vote, he asked if everyone on the board understood that it would take two yes votes to move forward and all five members agreed. He stated that proponents of the project were also present and there were not dissenting questions. After the results came in, people started to question it. He stated he feels the board should let the voters vote.

Executive Session - Personnel

MOTION

Motion to enter executive session by C. Smith with the Board and the Town Manager and T. Parisi regarding personnel. Seconded by E. O'Shea. The board entered executive session at 6:50.

MOTION

Motion to exit executive session with no action taken by C. Smith at 7:00pm. Seconded by E. O'Shea. All in favor. So voted.

Adjournment

MOTION

Motion to adjourn by C. Smith. Seconded by E. O'Shea. All in favor. So voted. The meeting was adjourned at 7:00 P.M.

Submitted by Brittany Gilman

Date of Approval