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April 19, 2013

Town of Waitsfield Selectboard
9 Bridge Street
Waitsfield, VT 05673

Re: Town Ballot

Dear Bill & Chris:

I am writing regarding the above-referenced matter. After further consideration, extensive discussion and legal research, and numerous attempts to craft language for a special meeting warning that provides the Waitsfield voters with a choice of sites for the town offices, I recommend that the Selectboard reject this approach and instead place a single bond article before the voters. This single bond article may or may not include reference to a specific town office site.

As you know, bond articles and public questions voted by Australian ballot are typically required to be in a form that provides the voters with the ability to clearly answer the question presented either “yes” or “no” (or “in favor of” or “opposed to”). See e.g., 24 V.S.A. § 1758(a); 17 V.S.A. § 2681a(f). Public questions generally must be presented with sufficient clarity and definiteness to allow each voter to judge whether he or she would or would not assent to the proposed action. 17 V.S.A. § 2642 and related cases. Equally important, the body calling for a vote must be able to readily discern the result of the vote – thus, in parliamentary procedure, all of the regular methods of voting on motions described in Robert’s Rules of Order Newly Revised (1990 ed.), at 403, involve expressing a preference akin to voting yes or no on a single proposition (i.e., voice vote (aye or nay), rising, show of hands). Public questions that present more than one choice to voters, or that ask them to express a preference from among several options (even if drafted as a single question), are arguably inconsistent with the statutory requirements referenced above. Such questions also raise issues regarding how best to express the potential choices to voters and how to interpret the results of any vote.

For example, and as we have discussed at length, public question that asks the voters to select between two or more potential town office sites runs the risk that

more than one option will receive more affirmative votes than negative votes, that the option that “passes” may have fewer affirmative votes than an option that is defeated, or that only a plurality of voters favor the option having the greatest number of affirmative votes. All of these scenarios lay the groundwork for uncertainty regarding the result and/or for a voter challenge to the result of the election. See 17 V.S.A. § 2603 (“The result of an election for any ... public question may be contested by any legal voter entitled to vote on the ... public question to be contested). Obviously, any voter challenge has the potential for increased costs and delays for the Town.

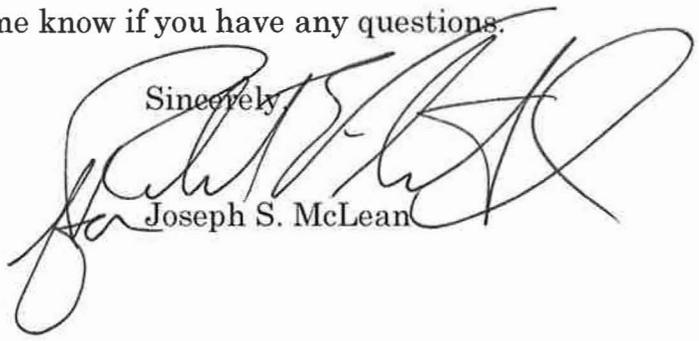
During the Selectboard meeting on Monday night, we discussed a variety of ways to potentially give effect to the goals and intent of the recent citizen petition, and the Selectboard voted to try to develop language for a warning that would include options for a town office site. We also discussed the many difficulties inherent in attempting to provide the voters with multiple site choices as part of a public question. As you know, I had already made several attempts at formulating a legally sufficient warning that provided for options, with somewhat “mixed” results; I did not want to completely rule out the possibility that such language could be developed. Despite our further efforts to develop such language, we have not been able to resolve the potential statutory conflicts or uncertainty that arises from providing for such choices, nor can we say with confidence that instructions on the ballot or other shortcomings of language or logic, noted above, would withstand judicial scrutiny in the event of a voter challenge. Therefore, we recommend abandoning the effort to develop a bond article or public question that provides for choices for a town office site.

What we can say with confidence, based on our review of the law (as well as our consultation with the Vermont Secretary of State’s office and Vermont League of Cities and Towns), is that a single bond article requesting voter approval for a designated sum of money in the statutory form that we have discussed would likely withstand judicial scrutiny even without a specific site designated (although we generally do prefer to include site selection in a bond article so the voters may make the most informed decision possible). I understand that the issue of whether or not to include reference to a specific site in any article may turn on whether or not the CDBG-DR application process requires the Town to identify a specific project site at this time to make a grant award. We have placed calls to staff persons at the Agency of Commerce and Community Development (Cindy Blondin, 828-5219, and Carl Bohlen, 828-5215) and have reviewed its website, http://www.accd.vermont.gov/strong_communities/opportunities/funding/cdbgdr , but have not yet obtained an answer to this question. We will notify you as soon as we learn more.

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In the meantime, please let me know if you have any questions.

Sincerely,


Joseph S. McLean

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