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LEGAL AND REGULATORY NOTES

Supreme Court Orders Lowell to Reconsider Anti-Wind Ballot Measure

The Vermont Supreme Court ruled in January that the town of Lowell must convene a special meeting to allow voters to reconsider an anti-wind article that was "passed over" at the 2012 town meeting. *Wesolow v. Lowell,* 2014 VT 3.

The situation started in 2012 when a group of voters filed a petition that expressed opposition to wind power development in Lowell. The petition stated:

> Shall the voters of the Town of Lowell express their opposition to the G.M.P. [Green Mountain Power] and Velco Wind Project, given that this project has destroyed federally protected stream headwaters, destroyed the ridge line; will cause clinical depression and/or stress for many of those that live around it; will be an eyesore that curtails tourism, destroys the area we call "a national treasure"; threatens to turn the town into a slum town by depressing real estate values, future investments and development; raises electric rates, noise levels, and other inherent stressors that divide families in a community; exports huge sums of money out of the USA; may not even solve the problem of Carbon emissions; allows G.M.P. and Velco to not pay the town as much as promised, if at all, if the project does not go as well as they expected; and in the long run will increase the tax burden on the people of the town it was supposed to benefit?

The Lowell Selectboard warned the question as presented as Article #8 of the 2012 Lowell Town Meeting Warning. When Article #8 came up in the course of the town meeting, and before any comment or debate about the article could take place, a motion was made to "pass over" the article. That motion passed on a voice vote, without any discussion.

A motion to pass over is a common town meeting practice in Vermont, even though it is not specifically mentioned by name in Robert's Rules of Order. Less than a month after town meeting, a group of voters filed a petition for reconsideration of the article.

The law regarding reconsideration is as follows:

> If a petition requesting reconsideration or rescission *of a question considered or voted on* at a previous annual or special meeting is filed with the clerk of the municipality within 30 days following the date of that meeting, the legislative body shall provide for a vote by the municipality in accordance with the petition within 60 days of the submission at an annual or special meeting duly warned for that purpose.

17 V.S.A. § 2661(b) [Emphasis added.]

The selectboard refused to call a special meeting on the basis that the article had never been "considered" by the voters in the first place, and thus was not one that could be "reconsidered" under 17 V.S.A. § 2661.

The plaintiff sued the town of Lowell in Orleans Superior Court, which ruled in his favor and against the town. A subsequent appeal to the Vermont Supreme Court had the same result.

Neither court considered the content of the article nor did either consider whether the voters had any authority over that content. In other words, the courts were not faced with the question of whether the voters had the ability to "reconsider" an advisory, non-binding article in the first place.[1] Rather, they focused on the intent of 17 V.S.A. § 2661 and the effect of the town meeting day vote to pass over the article. The Supreme Court stated that the "practical effect" of the vote to pass over the article "amounted to consideration of or a vote on the article for the purposes of the applicability of 17 V.S.A. § 2661. Accordingly, the petition for reconsideration pursuant to § 2661 was appropriate..." *Wesolow v. Lowell*, 2014 VT 3 at ¶11.

In making its decision in this case, the Court was trying to fulfill the intent behind 17 V.S.A. § 2661, which is "to enable the voters of a town, upon securing the necessary signatures, to secure a vote to reconsider a matter previously acted upon by the voters." *Id.* As the Court understands them, the goals of the statute would be "frustrated by an interpretation that suggested that the right of voters to petition for reconsideration of a question turns on the parliamentary procedure by which the question was defeated in the first instance." *Id.*

In upholding the lower court's ruling, the Supreme Court ordered the town of Lowell to convene a special meeting to allow for a discussion, debate, and/or vote on the article. However, the Court's decision does not affect the legal nature of the article – it remains an advisory, non-binding question. Thus, even a positive vote on Article #8 will not bind the town in any way and will not compel the town to take any action in regard to wind-power development.

What the Court seemed to be reaching for is a way to allow opportunities for public discussion, debate, and/or a vote. Ironically, however, its decision in this case may have the opposite practical effect. Selectboards faced with similar situations in the future will be inclined to keep such articles off of the town meeting warning altogether, so that they are not faced with a subsequent special town meeting for reconsideration of those articles.

The decision is archived at http://info.libraries.vermont.gov/supct/current/op2013-291.html

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[1] Municipalities have discretion over whether to present an article to voters when that article "does not at all relate to municipal business or any matter falling within municipal authority." *Clift v. City of South Burlington*, 2007 VT 3, ¶8.