

MINUTES
Town of New Gloucester
SPECIAL BOARD OF SELECTMEN'S MEETING
7:00 p.m.
Monday, May 13, 2013
At the Meetinghouse

SPECIAL BOARD OF SELECTMEN'S MEETING

I. CALL THE MEETING TO ORDER & ATTENDANCE

Chairman, Steven Libby, called the meeting to order at 7:00 p.m. Present were Chairman, Steven Libby; Vice-Chairman, Linda Chase; Selectmen, Nathaniel Berry, Joshua McHenry and Mark Stevens; Town Manager, Sumner Field; and Recorder, Sharlene Myers.

Mr. Berry moved and Mr. McHenry seconded a motion to make public the memo from Town Attorney, Pat Scully, in regards to the Citizens Petitions. The motion carried on a vote of 5-0.

II. SCHEDULE NEXT MEETINGS:

Board of Selectmen:

7:00 p.m., Monday, May 20, 2013 at the Meetinghouse

Mr. Libby asked Mr. Field to explain the new Town Meeting procedures.

Mr. Field said people attending will check-in at the door and registered voters will receive a card to hold up for voting on articles.

A. Adjustments to the Agenda

None.

III. PUBLIC PARTICIPATION

Mr. Libby stated Public Participation would be broken up into non-water related and water related discussions.

Non-water related:

Stephen Hathorne, resident, said he would like to thank the Town's people, Public Works crew, Board of Selectmen and any others who helped repair the boards at Stevens Brook. He said it is good to see the water edge lined up with kids fishing. Thank you.

Patti Mikkelsen, resident, spoke to the Board concerning the cut in the proposed Administration budget of a part-time office employee. She said this person is instrumental in working with the Cable TV Channel 3 Bulletin Board along with her other office duties. She said the position holds a modest salary with no benefits and keeping this position would result in an extra \$5 per year in the tax bills.

Mr. Libby said the board would discuss this under Item 5.04.

Water Related:

Mr. Libby and Ms. Chase read the memo from the Town Attorney (please see attached memo).

Terri Hicks, Larry Zuckerman, Ryan Tripp, Jerry Witham, Beverly Cadigan, Laura Sturgis, Debra May, and Dennis McCann all spoke to the Board concerning the memo from the Attorney, submitted and circulating Petitions and the Water System Project.

For review of the complete discussion between the citizens and Town officials, please see the recording available at the Public Library.

IV. SCHEDULED ITEMS

5.02 To See What Action the Board Wishes to take in Regard to Citizens Petitions

Mr. McHenry moved and Mr. Libby seconded the motion to place the two Citizen's Petitions on the Annual Town Meeting Warrant.

Mr. Stevens said he has thought long and hard on this matter, has reviewed the tape of the Special Town Meeting several times and has concern of the potential cost to the Town if the vote is reversed. He said he would go along with the Attorney's recommendation to not place the petitions on the warrant.

Mr. McHenry said he wanted to thank everyone for their civility throughout the discussions. He said the February Town Meeting followed the process it has always followed and he has no concern with the validation of the process. He said the scheduling of dates, timeline, communication, all worked fine. He said in all fairness, you cannot undo what was done.

Mr. Berry said he has given this matter a lot of thought and has also reviewed the tapes of both meetings and workshop. He said there was an overwhelming vote and he did not observe any improprieties of the meeting. He said the Board has heard the complaints of the process and said he is not ashamed of the decisions that were made.

Ms. Chase said she would like to thank both sides for being respectful, except for a few. She said she is not in favor of the repeal and everyone makes decisions in their lives on what's important. She said everyone is responsible for the contamination, whether you purchased gas at the gas stations on Route 100 or traveled over roads that had been salted.

Mr. Libby said he wanted to thank Paul First, Town Planner, and Mr. Field for all their help and work. He said he has heard from all the components, proponents, Attorney's, Water District and Selectmen. He said he wants to do the right thing and it's difficult because those who he considered good friends won't be happy with his decision. He said he has no hidden agenda; he has considered all the options; the word "repeal" is a problem; and the vote is legal and it is done. He said the Board of Selectmen represents the Town and he sees no reason to expose the Town.

The motion failed on a vote of 0-5, with all opposing.

5.03 To See What Action the Board Wishes to take in Regard to Placing the Zoning Ordinance Revision on the Annual Town Meeting Warrant

Mr. Libby asked if the Zoning Ordinance Revision has gone through the complete process.

Mr. First said it has twice.

Ms. Chase moved and Mr. Berry seconded a motion to place the Zoning Ordinance Revisions on the Annual Town Meeting Warrant.

Mr. McHenry said he still believes there are flaws in this ordinance. He said it encourages new commercial development but not allow existing properties to become solely commercial. He said he will be voting against this motion.

The motion carried on a vote of 4-1, with Mr. McHenry opposing.

5.04 To See What Action the Board Wishes to Take in Regard to June 3, 2013, Annual Town Meeting Warrant

Mr. McHenry moved and Mr. Stevens seconded a motion to reinstate one full-time equivalent, previously intended to layoff, in the 116 Public Works Department, Article 5.

Mr. McHenry said he believes this layoff would cut the Public Works Department manpower too thin and there wouldn't be enough operators for the equipment. He said he puts faith in the Department Heads opinions.

Mr. Libby said there are many drivers plowing with pick-up trucks when they could be utilized in the big trucks.

The motion failed on a vote of 2-3, with Mr. Berry, Ms. Chase and Mr. Libby opposing.

Mr. McHenry moved and Ms. Chase seconded a motion to increase Article 6 to read \$198,157 and change the Selectmen statement to read "Board of Selectmen recommends \$197,157". The motion carried on a vote of 4-1, with Mr. Libby opposing.

Mr. McHenry moved and Mr. Stevens seconded a motion to reinstate the Health Insurance Opt-outs in Article 8. The motion failed in a vote of 2-3, with Mr. Berry, Ms. Chase and Mr. Libby opposing.

Ms. Chase moved and Mr. Libby seconded a motion to change Article 11 to read after the word following "Municipal Projects" and change the detail to show "Replace Town Hall Windows \$12,000 CR" and on next line "Modify Heating System \$12,000 CR". The motion carried on a vote of 5-0.

Mr. Libby asked Mr. Field if he verified Article 12 was for one vehicle.

Mr. Field said one vehicle is what was presented to the CIP Committee per the replacement schedule.

Mr. Berry moved and Mr. Libby seconded a motion to set the amount in Article 21, Undesignated Funds, to \$70,000. The motion carried on a vote of 4-1, with Mr. Stevens opposing.

Mr. McHenry moved and Mr. Stevens seconded a motion to reinstate the part-time office position, previously intended to layoff, in the 102 Administration Budget, Article 2.

Mr. McHenry said he is concerned with the maintenance of the Cable TV Channel 3 Bulletin Board and asked Mr. Field if he has a contingency plan.

Mr. Field said he does have a plan.

Mr. Libby said elimination of a person or position is not easy.

The motion failed on a vote of 0-5, with all opposing.

Mr. McHenry moved and Mr. Stevens seconded a motion to sign the Annual Town Meeting Warrant, as amended. The motion carried on a vote of 5-0.

V. LEGAL

None.

VI ORAL COMMUNICATION

A. Selectmen

Mark Stevens – said he wanted to thank everyone in attendance. He said it is not easy and hopefully everyone can move forward.

Joshua McHenry – said he hopes tonight’s discussion and decision provided closure, amicably, for the future.

Nathaniel Berry – said he would like to encourage the Board to look at the Legislative Bill concerning street lights in Municipalities. He said the Public Safety Committee is discussing this topic and if all in the Town are necessary.

Linda Chase – said she would like to thank all those in attendance.

Steven Libby – said he agrees with all comments.

B. Town Manager

Mr. Field said he would like to thank the Public Works Crew on the work they have been doing around the Town Hall Complex. He said they installed shelving in the Parks & Recreation/Community Fair storage area in the Community Building; painted stair railings at the Library; replaced light bulbs in Town Hall; and fixed the deteriorating handicap ramp at the Community Building. He said Harvey Price, Parks & Recreation Director, also replaced the swing seats and chains. Mr. Field he would also like to recognize the work that has been done to the grounds of the Town Hall Complex. He said landscaping work was done and the garden ladies have the gardens looking wonderful.

C. Boards, Department Heads, and Committees

Steven Johnson, Water District Trustee, said he would like to commend the folks who worked on the Water District design plan. He said Jim Fitch, Steve Libby, Paul First put in a lot of hard work and time; and Gary Sacco and Ted Shane offered their ideas and direction as needed.

Jim Giffune, Water District Trustee, said he has utmost admiration for the Board of Selectmen for the countless hours they put in for the Town.

Joshua McHenry asked Mr. Field if the Attorney’s notice would be posted to the website.

Mr. Field said it would and there would be copies available for pick-up at the Town Office.

VII. ADJOURN

Mr. Berry moved and Mr. Stevens seconded a motion to adjourn at 9:09 p.m. The motion carried on a vote of 5-0.

Approved May 20, 2013

Steven M. Libby, Chairman

Linda D. Chase, Vice-Chairman

Nathaniel L. Berry IV, Selectman

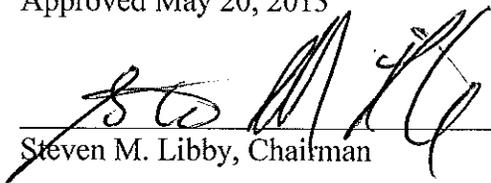
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Nathaniel L. Berry IV, Selectman



Joshua J. McHenry, Selectman



Mark A. Stevens, Selectman

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Memorandum

To: Board of Selectmen, Town of New Gloucester

Cc: Sumner Field, Town Manager

From: Pat Scully

Date: May 13, 2013

Re: Town Obligations in Response to Petitions Related to New Gloucester Water System

The purpose of this memorandum is to summarize the facts and history related to the New Gloucester Water System and the petitions recently submitted to the Town requesting that certain articles be placed on the Town Meeting warrant concerning the Water System, and to advise the Board of Selectmen of its legal obligations in acting on the petitions.

I. Drinking Water Well Contamination in the Upper Village

The Maine Department of Environmental Protection (MDEP) has identified extensive petroleum contamination of drinking water wells in New Gloucester's Upper Village. During the late 1980's and early 1990's, four gasoline station tank failures were identified by MDEP within an 800' radius. The sites were partially remediated by the removal of soils. The groundwater, however, was contaminated. Based on the most recent well testing, MDEP has identified 10 drinking water wells that are currently contaminated or at risk of contamination from petroleum constituents Benzene and/or MTBE. There are additional wells with residual levels of MTBE and Benzene.

For many years, the Maine Department of Transportation ("MDOT") maintained an uncovered pure salt pile near the site of the current Public Works building. The salt pile was transferred to the Town during the early 1950's and was used as the Town's sand and salt pile for many years. It was eventually covered in 1987. During MDEP's testing of drinking water wells for petroleum, significant contamination of sodium and chloride was documented. At least an additional nine wells were identified as contaminated or at risk from contamination from sodium and/or chloride.

Currently, a total of 19 wells have been found to be contaminated or at risk of contamination by petroleum constituents and/or by sodium or chloride above drinking water standards. Additional wells are affected and considered below drinking water standards. The impacts of this contamination include:

- Public health concerns due to high levels of contamination, such as a food service business with MTBE levels exceeding the drinking water standard. Another residential rental property with Benzene levels was 11 times the drinking water standard. Benzene is a known carcinogen. MTBE is a suspected Carcinogen.
- Reported cases of business and residence re-sale and re-finance failures due to water stigma and health concerns. Lending institutions are either unwilling to lend to contaminated properties or unwilling to lend at favorable rates.
- Groundwater contamination contributes to a lack of investment in one of New Gloucester's traditional business and residential districts. The Upper Village is one of the lowest median household income neighborhoods in New Gloucester.

II. Options to Address Contamination

The experts retained by the Town and MDEP have concluded that drilling individual replacement wells on the contaminated properties is not a viable option to address existing contamination. According to the hydrogeologist contracted by the Town and MDEP, properties in the contamination area are generally small and have individual septic systems. Therefore, siting new wells would be difficult. More importantly, new wells would be drilled into the same bedrock aquifer known to be contaminated. Drilling a new well yielding uncontaminated groundwater in the same aquifer is considered unlikely. Pumping from new wells also could alter groundwater flow and exacerbate the movement of contaminated groundwater.

The Town and MDEP have provided temporary filtering systems for many properties. The filter systems, however, are ineffective if not properly maintained and operated, are costly, and result in additional indirect costs. For example, one known property has replaced its well pump five times in 10 years due to salt corrosion. The reverse osmosis systems used to treat the salt contamination require the addition of large quantities of additional salt for water softening and pre-treatment. The entire salt load is discharged to septic systems, perpetuating the groundwater contamination. The reverse osmosis systems also use large amounts of electricity.

In 2006, the MDEP and the Town's Board of Selectmen decided to investigate the feasibility of a public water system to permanently address the Upper Village contamination issue. The feasibility study was conducted by Drumlin Environmental and involved more than five years of hydrogeological research and the evaluation of different source options, including connection to the Auburn Water District. In May 2011, based on the results of the feasibility study, the Board decided that the

development of a New Gloucester source system would be the most cost effective solution to the contamination problem. Connecting to the Auburn water system is currently estimated to be nearly twice the estimated cost of a New Gloucester-based system. The Auburn water system option also would be eligible for fewer grants based on funding income requirements. In August 2011 the Town retained Wright-Pierce, an engineering firm, to develop a preliminary design for the Upper Village Water Project. The preliminary design was completed in August 2012.

III. Formation of the District and Adoption of the Interlocal Agreement and Ordinance

In January 2012, the voters of New Gloucester residing in the area of the proposed Water District approved the formation of the New Gloucester Water District. The Maine Legislature created the District by Private and Special Law, 2012 Chapter 19. Federal and State funding sources were secured to help fund the Project, contingent upon the financial support of the New Gloucester voters.

In January 2012, the Town obtained preliminary funding approval from MDEP for 20.8% of eligible expenses, totaling approximately \$379,000. In March 2012, the Town received an award commitment by Cumberland County under the Community Development Block Grant (CDBG) Program for \$233,165, contingent on USDA Rural Development (Rural Development) and Town funding.

Wright-Pierce completed preliminary engineering services in August 2012, including PDR, PER, Rural Development Environmental, and Fundraising Assistance. The total cost of preliminary engineering services was \$30,513.

In November 2012, the Town received a preliminary award commitment by Rural Development of a \$1,475,000 grant and loan package, contingent on Town funding and passage of a Town ordinance. In December 2012, the Town received preliminary approval from the Maine Drinking Water Program for the proposed water source.

On January 14, 2013, at a Special Town Meeting, a warrant article went before the voters to approve an Interlocal Agreement between the Town and the District, to approve a Water Service Ordinance and to approve an easement to be provided by the Town to the District. The article narrowly failed. Subsequently, the Town and the District revised the Interlocal Agreement and the Ordinance to address concerns raised by residents. On February 16, 2013, the voters at a Special Town Meeting overwhelmingly approved a warrant article approving the revised Interlocal Agreement, revised Ordinance, and the easement.

Following the February 16th Town Meeting vote and a bid process, on February 19, 2013, the District awarded a final engineering and construction observation contract to Wright-Pierce for \$193,100.

On March 14, 2013, the District and MDEP executed a final agreement in which the MDEP committed to fund 20.8% of eligible expenses, estimated at \$353,000. On March 21, 2013, the Town closed on interim Project financing of \$1,179,827 with Androscoggin Bank and the District entered into a \$33,500 contract with Drumlin Environmental for additional hydrogeology and permitting related to the proposed well. As of April 22, 2013, the engineering work by Wright-Pierce was 95% complete. In late April 2013, the Town drew on \$43,080 in CDBG grant funds to pay Wright-Pierce in part for the work performed to date. On May 9, 2013, the District and Drumlin Environmental amended their contract to include a well drilling subcontract at a cost of approximately \$39,500.

The approximately \$2,000,000 construction project went to bid on May 9, 2013.

IV. Terms of the Interlocal Agreement and Ordinance

Under the terms of the Interlocal Agreement dated as of February 16, 2013, the Town and the District agree to share the costs of constructing and operating the Water System serving the Upper Village. The Agreement creates a Joint Board consisting of the Town's Board of Selectmen and the Board of Trustees of the District. The Agreement provides that the District will pay the operating and maintenance costs of the Water System through user rates, with the Town providing billing and collection services to the District. The Town is obligated to pay the debt service costs of the \$800,000 Rural Development loan. In addition, the Town is obligated to pay up to \$212,000 for the cost of individual water service connections to the Water System. The Agreement has a forty year term to match the term of the Rural Development loan.

Section 11.4 of the Interlocal Agreement authorizes the Board of Selectmen to terminate the Agreement upon the Town's repayment in full of all Debt Service amounts, provided that the Town gives one year's notice of termination to the District, with the effective date of the termination to be the following July 1. The term "Debt Service" as used in the Agreement is defined to include the principal and interest incurred in connection with repayment of the borrowing from Rural Development for the planning, engineering, construction and installation of the Water System.

The Ordinance requires all owners of buildings in the defined Project Area of the Upper Village to connect to the Water System within 180 days of notice from the District and prohibits thereafter the use of groundwater from existing or new contaminated wells for drinking water, agriculture, gardens and animal husbandry. The Town's adoption and enforcement of the Ordinance is required under the terms of the Town's grant/loan agreement with Rural Development.

V. Obligations Incurred to Date

At the current time, the Town and/or the District have incurred numerous contractual obligations in reliance on the voters' approval of the District's creation, the adoption of the Ordinance, and the Interlocal Agreement. They include:

- A. The Town entered into the Interlocal Agreement with the District by which the Town assumes the obligation to pay the Debt Service on the Rural Development loan and to pay up to \$212,000 of the costs of service connections. As noted, the Debt Service obligation includes the full borrowing from Rural Development to fund the development and construction of the Water System. The termination provisions in the Interlocal Agreement allow termination only on a full year's notice and only upon payment of all Debt Service.
- B. The Town granted an enforceable easement to the District for location of certain District facilities.
- C. The District entered into the Engineering and Construction Observation Contract with Wright Pierce. The contract total is \$193,100. The engineering portion is 95% completed. Approximately \$71,000 is due.
- D. The District has entered into an interim Project financing agreement of \$1,179,827 with Androscoggin Bank.
- E. The Town has entered into a CDBG grant contract with Cumberland County for \$233,165, and to date the Town has received initial payment of \$43,080 from the CDBG grant. These funds have been passed down to the District as subgrantee for reimbursable project expenses.
- F. The District has entered into the Rural Development Grant and Loan Agreement.
- G. The District has entered into an Agreement with the MDEP for approximately \$353,000, which includes \$100,000 of Federal LUST funding.
- H. The District has entered into an agreement with Drumlin Environmental for Well Drilling and Hydrogeology Services for \$73,000.
- I. The Town and the District have incurred legal and bond counsel services in excess of \$20,000.
- J. The District has entered into service agreements with individual home and business owners.
- K. The District has entered into geotechnical contracts with Summit Environmental.
- L. The District has entered into agreements with Sebago Technics for surveying services.
- M. Contractual obligations based on the February 16th Special Town Meeting total: grants \$1,261,165; long-term and interim loans \$1,979,827; building contractors \$272,000. The approximately \$2,000,000 construction project went to bid on May 9, 2013.

VI. The Petitions

On April 18, 2013, two voter petitions were submitted to the Town pursuant to 30-A M.R.S. § 2522, requesting that the Town place the following articles before the voters at a town meeting:

1. Shall the ordinance entitled “Town of New Gloucester Upper Village Water Service Ordinance” be repealed?
2. Shall the board of selectman be directed to terminate the “Interlocal Agreement between the Town of New Gloucester and the New Gloucester Water District” according to Section 11 of said agreement?

VII. Legal Analysis

A. Effect of the Petitioned Articles.

The Petitions, if approved by the voters, would effectively rescind the Town Meeting vote of February 16, 2013, repeal the Ordinance, and direct the Board of Selectmen to terminate the Interlocal Agreement with the District. The effect of the two petition articles would be to prevent the Town and the District from meeting their contractual obligations to one another and to several of the funding sources and contractors, including Rural Development and the MDEP.

It would also leave the contamination issue unresolved. The Town has accepted an obligation to assist salt contaminated property owners.

B. The Statute

When a town receives a written petition of at least 10% of the number of votes cast in the last gubernatorial election, 30-A M.R.S. § 2522 requires that the municipal officers “shall either insert a particular article in the next warrant issued or shall within 60 days call a special town meeting for its consideration.” 30-A M.R.S. § 2521 states that “[i]f the selectmen unreasonably refuse to call a town meeting, a notary public may call the meeting” (emphasis added). Section 2521 indicates that there are instances in which a Board of Selectmen can reasonably refuse to call a town meeting (or place an article on the warrant) despite receipt of an otherwise complete voter petition.

C. Case Law

Maine court cases make it clear that there are several grounds on which the Board of Selectman can refuse to insert a proposed article on the warrant for a Town Meeting vote. The first is where third parties have acquired vested rights or acted in reliance on a prior town vote of authorization. Under such circumstances, the Town **may not** put forward an article authorizing a reconsideration of the original vote.

The principal case in support of this principle is Dunston v. Town of York, 590 A.2d 526 (Me. 1991). In Dunston, the voters in York voted in September 1989 to approve a warrant article to spend \$5 million to buy land and build a school. Within the next year, the school district issued \$900,000 of interim bonds, bought land for \$365,000, and awarded a construction contract in excess of \$3 million. Almost a year later, a voter petition was submitted to the Town requesting a special town meeting to vote whether to rescind the September 1989 vote. After the Board of Selectmen voted not to place the article before the voters, the Petitioners filed a lawsuit asking the Court to order the Town to compel the Town to conduct the requested vote. The Maine Supreme Court dismissed the action, upholding the Selectmen's decision not to set a town meeting vote.

The Court in Dunston ruled that the selectmen have the authority to "exercise their sound discretion in determining whether the written petition required compliance with the provisions of section 2522." The Court noted that it had "previously held that once a third party has acquired vested rights or acted in their detriment in reliance on a legally authorized vote **the town may not reconsider that original vote.**" *Id.* (emphasis added). The Court also noted that the bonds were issued for the project in advance of the petitions being filed, and that two third parties' rights had long since vested, including the construction company with the contract and the holders of the issued notes. The Court then ruled that the selectmen had properly exercised their discretion by refusing to put the petitioned articles on the ballot.

A second recognized ground for refusing to put a petitioned article on the ballot is where the petition question seeks to reverse a prior Town Meeting vote. In Vassalboro v. Denico (1990 Me. Super. LEXIS 51), the Superior Court in Kennebec County ruled that a Board of Selectmen could refuse to put a petitioned article on the ballot where the article merely sought to reverse a prior vote. In September 1989, the voters in Vassalboro approved a school financing bond. In October 1989, a group presented the Town's Board of Selectmen with a petition to revote the school financing article. The board rejected the request. On appeal, the Superior Court determined that the statutes governing voter petitions for warrant articles "apply to petitions proposing new articles for voter consideration or concerning municipal officers' failure to act and should not apply to situations, such as the one presented here, in which minority voters seek a revote on a recently approved referendum." The Court also stated that "to find to the contrary would mean that no vote would ever be conclusive and municipal decisions could rarely be relied upon with any finality."

D. Discussion

As noted in the case law cited above, under the governing statute, upon receipt of a petition with sufficient signatures, the Board of Selectmen has discretion to determine whether placing the article on the warrant is required. In this case, there are at least two reasons why the Board could decide to refuse to place the petitioned articles on the warrant. The first, applying the Superior Court's logic in Vassalboro v. Denico, would

be to conclude that the petition process under 30-A M.R.S. § 2522 does not apply to petitions seeking a revote of a prior Town Meeting vote. In this case, the vote at the February 16, 2013 Town Meeting was overwhelming. Given that vote, it appears unreasonable to interpret 30-A M.R.S. § 2522 as authorizing a minority of voters by petition to force a revote of a valid Town Meeting vote simply because the petitioners' views did not prevail on the first vote. As noted by the Court, such a result would mean that no Town Meeting vote would ever be conclusive.

The second, and perhaps more compelling argument, is under the Dunston v. Town of York holding. In reliance on the overwhelming Town Meeting vote of February 16, 2013, the Town and the District entered into numerous binding contracts and commitments listed in Section VI above. Through those commitments, the Town has assumed binding legal payment and performance obligations. The parties to those agreements also have acted in reliance on the agreements and on the Town's authority to enter each.

One example is the Interlocal Agreement with the District. Under the terms of that agreement, the Town is obligated to pay the debt service on the Rural Development loan and to pay a portion of the service connection costs up to a cap. While the petitioned article would seek to compel the Board to terminate the Interlocal Agreement, the very termination provision in the Agreement can occur only on a full year's notice and only if the Town has paid the full debt service on the completed Water System Project. The District has relied on the Town's authorization and execution of the Interlocal Agreement by proceeding with the preliminary development of the Water System project and by entering into numerous other commitments with consultants and service providers as well as its commitments in its agreement with the MDEP.

Cumberland County has distributed CDGB funds to the Town for the Water System Project. Androscoggin Bank has provided interim financing under a loan agreement. Rural Development has entered into a Grant and Loan agreement with the Town. And several consulting and engineering firms have entered into agreements for services and have provided part of those services in reliance on the validity of the Town vote.

Under the Dunston decision, the Board has the clear authority to refuse to place the petitioned articles on the warrant due to the fact that numerous third parties have acquired vested rights or acted in their detriment in reliance on the legally authorized vote of February 16. In fact, under the Court's ruling in Dunston due to those vested third party rights, the Town **may not** reconsider the February 16 vote.

VIII. Conclusion

For the above reasons, I recommend that the Board of Selectmen refuse to place the petitioned article on the warrant for a Town Meeting.

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