



**Town of Amherst
Town Council Meeting
Wednesday, July 28, 2021
Virtual Meeting
Executive Session Minutes**

President Griesemer called the executive session to order at 1:07 p.m. pursuant to the provisions of MGL c.30A §21(a) 3, to discuss strategy with respect to litigation: Superior Court Civil Action No. 2180CV00081 Terry Y. Allen et al. vs. Board of Registrars of the Town of Amherst, as an open meeting may have a detrimental effect on the litigating position of the body.

Councilors Participating Remotely: Bahl-Milne, Brewer, De Angelis, DuMont, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, Steinberg, Swartz

Councilors Absent: None

Others Participating Remotely: Town Manager Paul Bockelman, Clerk of the Council Athena O’Keeffe, KP Law Attorneys Lauren Goldberg and Gregg Corbo

Griesemer confirmed all participants can hear and be heard and no one is present and can hear the discussion at their remote locations.

Bockelman reported that the Town has received written notice and timing of the case and that insurance has declined coverage. Bockelman stated an option for the Council’s consideration would be to place a question on the November ballot. The case now currently has civil rights components, the litigation timeline will be lengthy and will require significant work by the Town’s attorneys.

Attorney Corbo reported on the proceedings up to this point; the plaintiffs allege that the Town Clerk’s office made errors in the certification process, a motion has been made by the plaintiffs for preliminary judgement and expedited proceeding. The Town opposed the motion to expedite, and the plaintiffs subsequently files a motion for preliminary injunction to limit the time for the court’s response. The court partially granted the motion, and set an expedited hearing for August 23, with written opposition due August 9. The Town expects the court will hear testimony from the Assistant Town Clerk regarding the review of each rejected signature. At this time, the Town stands behind the actions of the Assistant Town Clerk, but there is no guarantee of an outcome in the Town’s favor. The Town should consider the impact of the litigation on the Town Clerk’s office in terms of work required to prepare and attend hearings, the litigation will require considerably more effort on their part which may interfere with their ability to do their regular work. There is also the issue of significant legal expense not covered by insurance; the Town does not have coverage for attorney fees of adverse monetary judgement.

Corbo suggested ultimate relief of the issue by placing the question on the November ballot, which would lead to a settlement or dismissal on legal grounds.

Attorney Goldberg added that the Town’s position has shifted due to the lack of insurance coverage; due to the risk of attorney fees from the civil rights claims the Town is in a less favorable position. The Council could place a question on the ballot in accordance with Charter section 8.6 rather than the voter veto procedure the petitioners sought via Charter section 8.4.

Griesemer was disconnected from the meeting at 11:24 pm.

Goldberg added that voter veto procedures under Charter section 8.4 require a 20% voter turnout.

Brewer asked about the 20% voter participation requirement and if the question would be binding.

Goldberg responded that the question would be binding, and nonbinding questions would follow different procedures.

Brewer asked about the form of the question.

Goldberg suggested language like, “confirm the Council’s vote” for a potential ballot question.

Schreiber asked if the Town could request the court to instruct the Town to follow voter veto procedures.

Goldberg spoke about the bottom threshold for a special election that would not be as great a concern at a regular election due to greater voter participation.

Schoen asked about voting on ballot question language in executive session.

Corbo spoke about the reason for the executive session and the Council’s decision in executive session would inform litigation strategy; the Council would discuss the reasons for placing the question on the ballot and re-vote on the ballot question language in open session.

De Angelis expressed concern about opposition to Council actions using litigation tactics in the future.

Ross asked about the MBLC perspective on the litigation.

Bockelman responded that the MBLC is aware of the litigation.

Schoen spoke about leaving a space for a printed name so this situation can be prevented in the future.

Hanneke spoke about potential future lawsuits and spoke in opposition to putting the question on the ballot using Charter sec. 8.6 procedures on principle.

Ryan spoke about the risk to the library project, staff time, and cost to the Town in defending principles.

Schreiber spoke about standing behind the actions of the Clerk’s office.

Goldberg spoke about defending principles versus risks.

Brewer spoke about the voter turnout threshold.

Bockelman stated there is no alternative election to choose, the Council can place a question on the ballot in November but cannot call a special election without an order from a judge.

Hanneke asked what would happen if the judge ruled that the required number of signatures has been met.

Corbo responded that voter veto procedures would continue.

Schoen spoke in favor of a ballot question for reasons related to fiscal responsibility.

Bahl-Milne asked about the ability of the Town to move forward with the MBLC while the litigation is pending.

Bockelman responded that the Town will continue to move forward based on the Council’s vote, and that a positive ballot question outcome would remove any remaining doubt.

Griesemer spoke about the deadlines to place a question on the ballot.

Brewer asked that the Council be provided the form of the ballot question.

Bahl-Milne disconnected at 2:46 pm.

MOTION: Griesemer moved, second by Schoen, to inform the Town Manager of the Council's willingness to place the question on the November ballot pursuant to section 8.6 of the Charter, with the intent to settle regardless of whether the plaintiffs will agree to settle.

Corbo stated the Council will need to vote on ballot question language on Monday.

Bahl-Milne reconnected at 2:50 pm.

Ryan spoke in support of the motion.

Bahl-Milne and Schreiber disconnected at 2:53 pm.

Councilors discussed meeting in executive session on Monday before the regular Council meeting.

Schreiber & Bahl Milne rejoined at 2:57 pm. Bahl-Milne disconnected at 2:57 pm.

Hanneke spoke in opposition to the motion due to the loss of the 20% voter turnout threshold.

Brewer and Ross agreed with Hanneke.

Ross disconnected at 3:03 pm.

Steinberg expressed concern that the litigation will be costly and endanger the MBLC support.

Hanneke briefly disconnected and reconnected at 3:06 pm.

VOTED 9-4 by roll call (Bahl-Milne, De Angelis, DuMont, Griesemer, Pam, Schoen, Schrieber, Swartz, and Steinberg voted Yes; Brewer, Hanneke, Ross, and Ryan voted No) to inform the Town Manager of the Council's willingness to place the question on the November ballot pursuant to section 8.6 of the Charter, with the intent to settle regardless of whether the plaintiffs will agree to settle.

Schreiber disconnected from the meeting at 3:07 pm.

Griesemer adjourned the meeting from executive session at 3:10 pm.

Respectfully submitted,



Athena O'Keeffe, Clerk of the Council