

Joe Colangelo

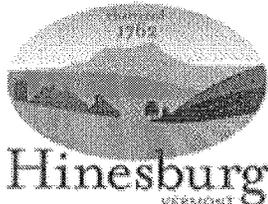
From: Alex Weinhagen <hinesburgplanning@gmavt.net>
Sent: Friday, September 27, 2013 3:00 PM
To: Joe Colangelo; Bud Allen
Subject: FW: Petition for zoning regs town-wide vote

Joe,
See below for VLCT's advice on NOT placing petition article 2 on the ballot. Bud's comments also included. Please share with the Selectboard.

One of us needs to contact George Bedard to fill him in on this.

FYI – Per statute (17 VSA 2680g), there has to be an informational meeting within 10 days of the town-wide vote.

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From: BudAllenlaw@aol.com [mailto: BudAllenlaw@aol.com]
Sent: Friday, September 27, 2013 11:49 AM
To: hinesburgplanning@gmavt.net
Subject: Re: Petition for zoning regs town-wide vote

Alex,
I think you're exactly right. We're not a rural town until we have a vote on the question of being a rural town by Australian ballot. We have to become a rural town before we can decide to zone by Australian ballot.

So, the answers to your questions should be yes and yes.

Bud

From: Garrett Baxter [mailto:gbaxter@vlct.org]
Sent: Friday, September 27, 2013 10:14 AM
To: 'Alex Weinhagen'
Subject: RE: Petition for zoning regs town-wide vote

Dear Alex,

I wouldn't characterize Article 2 as being out of order (as it's not a question that will be ruled upon by the town moderator), but rather one that the Legislature has not given the voters the authority to petition to

determine. Vermont case law on this matter reveals that a municipality is under no obligation to warn an article for town meeting which is requested by a petition signed by 5% of the voters of the municipality and filed in a timely fashion [17 V.S.A. § 2642(a)] if the petition is for a matter that is "frivolous, useless or unlawful" and not "within the province of the town meeting to grant or refuse through its vote." *Royalton Taxpayers v. Wassmandsdorf*, 260 A.2d. 203 (1969). This case and its litany stand for the general principle that a municipality's selectboard can treat as advisory and non-binding or can deny any petition calling for an article to be placed before the voters if the Vermont Legislature has not conferred upon the voters the right to vote on the particular issue it raises. The Vermont Supreme Court has stated that a selectboard cannot be compelled to present a petitioned article if it does not "set forth a clear right which is within the province of the town meeting to grant or refuse through its vote." *Clift v. City of South Burlington*, 2007 VT 3, ¶16, quoting *Royalton Taxpayers' Protective Assoc. v. Wassmansdorf*, 128 Vt. 153, 160(1969).

The Vermont Legislature has not conferred upon voters the authority to force a municipality's legislative body to put the question of whether a municipality with a population of over 2,500 but under 5,000 (as evidenced by the most recent U.S. Census) should adopt zoning and subdivision regulations by Australian ballot before the voters if that municipality has not first voted, by Australian ballot, to be considered a "rural town". "Rural town" means a town having, as at the date of the most recent United States census, a population of less than 2,500 persons, as evidenced by that census, or a town having 2,500 or more but less than 5,000 persons that has voted by Australian ballot to be considered a rural town." 24 V.S.A. § 4303(25). The Australian ballot vote to be considered a "rural town" is a prerequisite to electing to adopt zoning and subdivision regulations by Australian ballot. The vote by Australian ballot to be considered a rural town and the vote to adopt zoning and subdivision regulations by Australian ballot (which may be voted from the floor or by Australian ballot depending on how the municipality has elected to decide such public questions) could not occur contemporaneously because the municipality would not know the results of the first vote and hence whether it was indeed a "rural town" in time to have the requisite legal authority to vote on the latter. In other words, a municipality cannot elect to require that zoning and subdivision regulations be adopted by vote of Australian ballot if it has yet to be determined that it is in fact a "rural town". These articles could have been conditioned upon one another if the questions were to be decided in succession from the floor, but because the vote to be a rural town must be conducted by Australian ballot it is impossible to tally the results in time to validate the municipality's exercise of authority as a "rural town".

As I mentioned earlier, the municipality's selectboard can treat as advisory and non-binding or can deny any petition calling for an article to be placed before the voters if the Vermont Legislature has not conferred upon the voters the right to vote on the particular issue it raises, however my recommendation would be to contact the lead petitioner, inform them of the inability at this time to vote on zoning and subdivision regulations generally by Australian ballot and see if he/she would be amenable to taking the first step: whether the voters of the town want to be considered a "rural town" squarely before the voters.

Article 1 [:"Shall the changes to the Zoning & Subdivision Regulation approved on September 9, 2013, by the Select Board be repealed."] however is within the province of the voters to determine and an Australian ballot vote for the consideration of the zoning and subdivision amendments approved by the Selectboard should be warned held. The reasoning supporting this opinion is that the Legislature has explicitly given the voters the authority to petition the Selectboard within 20 days of its vote for a vote on this matter. The law is clear that when that petition is filed (assuming it contains the requisite 5% of the voters' signatures) then "a meeting of the municipality shall be duly warned for the purpose of acting by Australian ballot upon the bylaw, amendment, or repeal." 24 V.S.A. § 4442(d).

I would recommend communicating this to the lead petitioner and working with the VT Secretary of State's Election Division to help effectuate the vote.

Sincerely,

Garrett A. Baxter

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From: Alex Weinhagen [<mailto:hinesburgplanning@gmavt.net>]
Sent: Thursday, September 26, 2013 4:00 PM
To: Garrett Baxter
Cc: Bud Allen; Joe Colangelo
Subject: Petition for zoning regs town-wide vote

Garrett,

Recall that we exchanged emails regarding the required timing for a town-wide vote once a citizen petition is received? You recommended I contact Will Senning at the Secretary of State's office. As you can see from Will's email thread at the end of this message, your advice was right on target. My interpretation is apparently understandable given the lack of clarity in the statute, but your interpretation is the safer and recommended option.

This is no longer academic, as we received the actual citizen petition yesterday (9/25/13), and the Town Clerk verified that it has the required number of valid signatures. See attached petition. As you can see, the petition proposes two separate articles. Article 1 is to repeal the regulation revisions approved by the Selectboard. Article 2 is to require a town-wide vote for any future regulation revision proposals.

I'm concerned that Article 2 is essentially out of order and is not something the Town can legally place on the ballot at this time. Pursuant to 24 VSA 4442c #1, the power to adopt zoning and subdivision bylaws rests with the legislative body, and only they have the authority to warn/hold a special or regular meeting for a town-wide vote on such a bylaw. With that said, 24 VSA 4442c #2 outlines an exception for this for "rural towns", such that a "rural town" can vote to adopt all zoning and subdivision bylaws by Australian ballot. Pursuant to 24 VSA 4303 #25, Hinesburg is NOT a "rural town" because our population is over 2,500. However, since our population is under 5,000 (2010 Census says population is 4396), 24 VSA 4303 #25 does give the community the ability to vote by Australian ballot to be considered a rural town.

So... I think Article 2 of the petition is out of order because it must be preceded by an affirmative vote to be considered a "rural town".

Questions:

1. Is Article 2 out of order as described above?
2. If Article 2 is out of order, can/should the Selectboard refrain from placing it on the ballot at this time?

The Selectboard plans to meet on Monday (9/30) in order to set the date for the town-wide vote. They plan to schedule the town-wide vote for November 5 since voters will be voting on another ballot item (CVU high school bond item) that day. Thankfully, that day complies with the timing window laid out in statute that we discussed previously. I'd like to give them an answer to this Article 2 issue by Monday, so a quick reply would be much appreciated.

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