

The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

TIMOTHY JANDEBEUR

V.

NORTHWOOD BOARD OF SELECTMEN

Docket No. 218-2019-CV-00148

ORDER

Plaintiff Timothy Jandebaur, a citizen of the Town of Northwood, brings this action against Defendant Northwood Board of Selectmen, requesting injunctive relief under RSA chapter 91-A. He asks the Court to invalidate two warrant articles related to appropriations for the development of a new public safety facility. The Court held a hearing on the matter on February 14, 2019 during which both parties presented argument and offers of proof.

Plaintiff's request for injunctive relief is based on his claim that Northwood's Public Safety Complex Committee (the "Committee")—an advisory committee Defendant formed in October of 2019—repeatedly violated RSA 91-A:2, II, in the course of developing plans for a new public safety facility by failing to: (1) provide notice of meetings, (2) hold meetings that were open to the public, and (3) record meeting minutes. See Compl. ¶¶ 3–5; Pet. Inj. Relief at pp. 1–2. As a result of these violations, he asks the Court to invalidate all of the actions the Committee took in developing the public safety facility project that is incorporated in Warrant Article 2 ("Northwood Safety

Complex”) and Warrant Article 3 (“Land Purchase for the Northwood Safety Complex”).¹
See Pet. Inj. Relief at p. 2.

Defendant admits that the Committee violated RSA 91-A:2, II, see Answer at pp. 1–2, specifically acknowledging that the Committee “was required to, but did not, properly notice some of its meetings and did not make minutes publicly available immediately following those meetings,” id. ¶ 5; see id. ¶ 6. However, Defendant also contends that invalidating Warrant Articles 2 and 3 is not appropriate based on the Committee’s statutory violations because Defendant made the ultimate decision to place the warrant articles on Northwood’s ballot, not the Committee. See id. at pp. 1–2. According to Defendant, “[w]hile [the Committee] made a recommendation to [Defendant], [the Committee] made no decisions regarding the warrant articles [Plaintiff] seeks to have invalidated; and therefore there are no decisions of [the Committee] to invalidate.” Id. at p. 2.

For the reasons explained below, the Court is not persuaded by Defendant’s argument. However, the Court will defer ruling on Plaintiff’s request for injunctive relief in order to give the parties an opportunity to supplement the record with evidence that supports their respective positions as to whether invalidating Warrant Articles 2 and 3 is justified under the circumstances.

¹ Plaintiff also claims that Defendant violated RSA 32:8 by paying or agreeing to pay money for purposes for which no appropriation has been made. See Compl., Attach. 1; Pet. Inj. Relief at pp. 1–2. Nevertheless, Plaintiff has not requested any relief with respect to this claim, see Pet. Inj. Relief at p. 2, and at the February 14, 2019 hearing he stated, “that’s not a big deal to me” and that “I can’t even imagine if you agree with me what you could possibly do about that. The money is spent. It’s gone. On the other hand, I do believe they broke the law.” Defendant contends that it has complied with RSA 32:8. See Answer at p. 2. The Court is inclined to agree. However, as explained herein, because the Court will provide the parties until February 22, 2019 to supplement the record with information showing whether the circumstances justify invalidating Warrant Articles 2 and 3 based on the Committee’s violations of RSA 91-A:2, II, at this time the Court will defer ruling on the issue related to RSA 32:8 as well.

“The court may invalidate an action of a public body or public agency taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.” RSA 91-A:8, III. In light of the record now before it, the Court is inclined to invalidate all of the actions that the Committee took during its October, November, and December 2018 meetings. These actions included, inter alia, recommending that Defendant contract with Turnstone Corporation as the Construction Manager for the public safety facility project, see Answer, Ex. B at p. 4, and that Defendant approve a warrant article for a twenty-year bond on Turnstone Corporation’s estimated \$5,975,000 public safety facility, see id. at pp. 5–6. The record demonstrates that these and other actions by the Committee are the basis of the proposals in Warrant Articles 2 and 3 that Defendant ultimately approved to be balloted. In light of the direct and natural link between the Committee’s actions and the substance of Warrant Articles 2 and 3, if the Court invalidates the Committee’s actions, it is inclined to also invalidate the warrant articles that are the direct and natural consequence of those actions.

As indicated above, the Court believes that invalidating the Committee’s actions is justified based on the circumstances as captured in the record now before it. It is evident that there was some public discussion of preliminary plans to study the development of a new public safety facility at Defendant’s meetings. See Pet. Inj. Relief, Exs. 1–2, 6. However, it is also apparent that the Committee proceeded to develop a project that far exceeded the scope of the discussions at Defendant’s public meetings and that it repeatedly violated RSA 91-A:2, II, in the course of doing so. Compare, e.g., Pet. Inj. Relief, Ex. 2 (Defendant’s members discussing an architectural design service contract for \$19,000), with Answer, Ex. B at p. 5 (Committee’s members discussing how

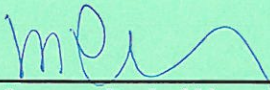
the construction manager it had recommended for the public safety facility development had estimated the cost of the project at \$5,975,000). The estimated cost of this project substantially exceeds what other communities like Bow and Farmington have recently spent in building public safety facilities that are significantly larger than the facility proposed in Warrant Article 2. Additionally, Northwood's legislative body recently voted against appropriating \$35,000 to establish a public safety complex expendable trust fund by a margin of 539 to 299. See Answer, Ex. D at p. 6. Despite these factors, and although Committee member Scott Bryer (who is also on the Board of Selectmen) recommended that the Committee comply with RSA ch. 91-A, the Committee made an affirmative decision to overrule Member Bryer's recommendation and to not follow the law.

Defendant represented at the hearing that the proposals in Warrant Articles 2 and 3 have been subject to public scrutiny, stating that "the Budget Committee held hearings on the [the warrant articles]. The Board of Selectmen had discussion in public meetings about putting the warrant article on the warrant. There was a deliberative session held on February 2 where all of the articles were discussed, debated, and if necessary amended. So there's been plenty of opportunity to ask the questions [Plaintiff] is now asking." However, despite admitting that the Committee violated RSA ch. 91-A, Defendant did not develop the record with respect to the opportunity that the public has had to observe and question the actual process that has resulted in the proposals contained in Warrant Articles 2 and 3. The Court considers this an important circumstance with respect to whether invalidating the warrant articles is justified.

Accordingly, the Court will defer ruling on Plaintiff's request for injunctive relief at this time in order to afford the parties an opportunity to supplement the record with evidence in support of their respective positions as to whether the circumstances justify invalidating Warrant Articles 2 and 3. The parties must submit any supplemental information that they wish the Court to consider by 12:00 p.m. on Friday, February 22, 2019. The Court will rule expeditiously thereafter.

So ordered.

Feb 15, 2019
Date



Marguerite L. Wageling
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 02/15/2019