

Wilmington Selectboard Agenda July 7, 2020 at 6:00 pm

1. Visitors, Public Comments, Possible Changes to the Agenda
2. Approve Minutes of June 16, 23 and 29, 2020; approve amended minutes of June 5, 2020 (5 minutes)
3. Police Department (15 minutes)
 - *Chief Murano to discuss the social worker working with the department.*
4. Public Safety Facilities Committee (15 minutes)
 - *The Selectboard to possibly approve the updated charge for the Public Safety Facilities Committee*
 - *The Selectboard to possibly re-appoint Chief Murano, Chief Moore, Dennis Richter, Jeremy White, Chuck Clerici, and Melanie Lopez to the Public Safety Facilities Committee for two-year terms expiring July 2022.*
5. 1% Local Option Tax Fund (10 minutes)
 - *The Selectboard to possibly approve \$9,400 for a geotechnical investigation on the Public Safety Facility Project.*
 - *The Selectboard to possibly approve \$5,000 to Wilmington Works for Eat, Sleep, Shop Local*
6. Other Business
7. Select Board Members Comments
8. Town Manager's Updates (10 minutes)
9. Executive Session (20 minutes)
 - *The Selectboard to possibly enter into executive session to discuss attorney-client communications related to the vacant Selectboard seat.*
10. The Selectboard to possibly approve the Town of Wilmington Vermont vacant Selectboard seat-resolution to appt.

Resolution of the Selectboard of the Town of Wilmington

Creating the Town of Wilmington Public Safety Facility Committee

WHEREAS, under the authority granted to it pursuant to 24 V.S.A. Section 872, the Town of Wilmington Selectboard has authority to create supplemental committees, boards, or commissions.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Selectboard that there shall be established for the Town of Wilmington, effective July 1, 2020, a Public Safety Facility Committee according to the following terms:

1. The Wilmington Public Safety Committee will be composed of not more than seven (7) members appointed by the Selectboard of the Town of Wilmington. All members will be residents of the Town of Wilmington, with an exception made for employee members. The terms of committee members shall be for 2-years.
2. The purpose of the Wilmington Public Safety Facility Committee shall be to:
 - A. Work closely with the Town Manager and Economic Development Consultant to identify grants, expertise and funding sources in support of construction for a new Wilmington Public Safety Facility.
 - B. Recommend to the Selectboard an architectural team with emergency facilities design/construction/budget experience via a competitive RFP process.
 - C. Recommend to the Selectboard the building site for a new Public Safety Facility.
 - D. Develop and recommend to the Selectboard an article for Town Meeting promoting a financial instrument, such as a bond, in support of construction for a new Public Safety Facility.
 - E. Recommend to the Selectboard a construction firm to build a new Public Safety Facility with significant energy efficiencies, balancing 21st Century professional Police and Fire Department needs with taxpayer's expectations for return on investment over 50-years, via a competitive RFP or Bid process.
 - F. Hold public meetings and report to the Town Manager and Selectboard, as required.
 - G. Enthusiastically promote and market the co-relocation of Police and Fire out of the floodplain to a new Wilmington Public Safety Facility in partnership with the Selectboard.
3. Officers of the Wilmington Public Safety Facility Committee will consist of a chairperson, vice-chairperson and a secretary either selected annually by a majority vote of the committee or appointed by the Selectboard at their discretion.

4. It will be the duty of the chairperson to preside at all meetings of the Wilmington Public Safety Facility Committee and to call special meetings of the Committee when needed. The vice-chairperson will perform the duties of the chairperson in the latter's absence. The secretary will keep an accurate record of the proceedings of the committee, take minutes at the meetings, and post the agenda and minutes of meetings through the Office of the Town Manager.

5. All meetings held by the Wilmington Public Safety Facility Committee will be open to the public unless an issue arises that requires an executive session. Regular meetings will be held each month. The meeting times and locations will be posted through the Office of Town Manager, no later than a 48-hour notice. A quorum will not be less than a majority of the members of the Committee.

BE IT FURTHER RESOLVED that the following individuals are appointed to the Wilmington Public Safety Facility Committee for the terms set forth herein:

Member Names

Chief Matthew Murano
Chief Scott Moore
Chuck Clerici
Melanie Lopez
Jeremy White
Dennis Richter
VACANT

6. Additional committee members will be selected through an open and transparent solicitation for volunteers who are Town of Wilmington residents with recommendations made to the Selectboard through the Office of Town Manager.

Dated at Wilmington, Vermont this 7th day of July 2020.

Selectboard Signatures:

Tom Fitzgerald _____

John Gannon _____

Vince Rice _____

Sarah Fisher _____

June 16, 2020

Town of Wilmington
attn: Scott Tucker, Town Manager

re: Quote for Geotechnical Investigation, Proposed Public Safety Building
Wilmington, VT

Dear Mr. Tucker,

I have been asked to provide a proposal for Geotechnical Engineering services for the above referenced project. A new Public Safety Building is being proposed, on a previously developed site East of the existing fire station. There are currently long-established structures on the site, I am assuming that all existing buildings and pads will still be in place when we perform test borings. We anticipate needing 2 full drilling days to accomplish a test boring program, as we do not know what to expect for soil types and subsurface obstructions. I would estimate that we can do between 6 and 8 borings, with at least one extending to refusal or very dense soils for a determination of the Seismic Site Class. We would mark drilling locations based on the available site plans, and contact Dig Safe and the Town to mark utilities. Borings would be selected in areas that are accessible by a truck rig. Borings would be backfilled with spoils and capped with cold patch where appropriate. A full Geotechnical Report would be prepared with recommendations for design and construction. Our prices would be as follows;

Subcontracted Drilling (mob/demob, 2 days, materials)	\$4,100.00
Field Engineer (total, with travel)	\$2,000.00
Markout, Dig Safe, Coordination	\$300.00
Geotechnical Report (includes labs)	\$3,000.00
Additional Consultation beyond Geotechnical Report	\$125.00/hour

Our total price estimate to complete drilling and reporting would be \$9,400. If refusal is shallow and we can get the drilling done in a day or even 1.5 days then the price will be decreased accordingly. I would schedule drilling once this price was accepted, we plan on 2 to 3 weeks to get a driller on site.

Sincerely,

Randall Rhoades

Randall Rhoades, PE
Principal

Accepted by:
Name, Title:

Wilmington Events Program Fund Application

Complete 30 days Prior to Event

Name of Organization/Business/Committee Wilmington Works

Mailing Address PO Box 1577 Wilmington, VT 05363

EIN# 47-3752645 Attach a W-9 On file Amount Requested \$5,000.00

Please Attach Certificate of Liability Insurance (must match applicant name)

Name of Event Eat Sleep Shop Local Deerfield Valley SUMMER Event Date July 15-August 31

Location of Event Wilmington/Dover independent businesses Contact Person Meg Staloff

Phone Number (802)380-9417 Email Address wilmingtonworks@gmail.com

Is this event partnered or co-sponsored with any other group? Yes

If so Who? Town of Dover, Southern VT/Deerfield Valley Chamber

Is this a new event? No If not, how long has this event been in existence? 6 years in winter

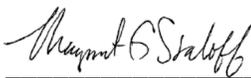
Describe the Event? (How many people are expected, the audience you are attracting, the goal, how the event will benefit the town, how the event will be advertised, number of volunteers, etc.)

Eat Sleep Shop Local has been a successful event, driving sales directly to our businesses during the Holidays. As we are recovering from Covid-19 shutdowns, it will encourage locals and regional residents, as well as summer visitors, to spend money locally and make an extra purchase. For any receipt of \$25 or more at a local merchant, shoppers can request a \$5 coupon to spend at any other participating merchant. Spending is tracked by way of a raffle. Shoppers get 1 entry per \$20 of spend.

We propose a few changes due to the current Covid recovery circumstances: First of all, after many years of requests, we are going to include Dover's independent merchants in this round. Second of all, we are expanding the period of the program to 6 weeks (rather than the usual 24 days). And we are also going to use a digital coupon program to allow us to issue and redeem coupons digitally where possible. The attached budget reflects those changes, upping coupons to 1600 rather than the usual and includes a marketing budget to advertise regionally as well as locally, and with targeted social media ads. Lastly, instead of giving a cash prize for the raffle, we will issue the prize as gift certificates to a local business or businesses of the winner's choosing.

Please attach a detailed budget with cost estimates, grant request, matching cash and in-kind funds and anticipated revenues (if any expected). Itemize each expense for the total cost of the event with vendor name (i.e. posters, banners, decorations, materials, advertising, etc.).

We issue the budget with the caveat that we MAY be able to fund this program with state funding. As that funding is still in question, we'd like to make the request locally. If we are funded by the State, we will let the Town know right away that funding is not needed!



6/25/2020

Signature of Applicant

Date

Meg Staloff

Program Coordinator

Print Name

Title

Submit to: jdefrancesco@wilmingtonvt.us or 2 East Main Street P.O. Box 217 Wilmington, VT 05363

Shop Local 2020 SUMMER Budget					
Expenses		2020 Budget	Notes		
Advertising		\$2,500.00	6x1/4 page ads DVN, Facebook, Reformer		
Supplies/printing		\$150.00	Local posters, coupons, printed by Minuteman		
Grand Prize		\$750.00	Raffle prizes (via gift certificates to local businesses)		
\$5 coupons		\$8,000.00	(1600 coupons)		
In-kind Labor paid by WW		\$2,525.00	105 hours @\$25 creative, coupons, admin		
Volunteer labor		\$3,456.00	96 hours @ \$18 staffing for weekends		
Digital coupon costs		\$594.00	Coupons tools for digital coupons		
Total		\$17,975.00			
Revenue					
Requested grant from Wilmington		\$5,000.00			
Requested grant from Dover		\$5,000.00			
Wilmington Works cash		\$1,994.00			
Wilmington Works in-kind paid Labor		\$2,525.00			
Volunteer labor		\$3,456.00			
Total		\$17,975.00			

Town of Wilmington, Vermont, Vacant Selectboard Seat – Resolution to Appoint

WHEREAS, on or about January 2020, the Town Clerk for the Town of Wilmington issued a press release for informational purposes, outlining that “Nominating Petitions for town and school offices are now available at the Town Clerk's office and on the town website www.wilmingtonvermont.us, and are due by 5:00p.m., Monday, January 29. Nominating petitions must be signed by 1% of the registered voters (16 signatures),” and

WHEREAS, the Nominating Petition for Mr. Mark O’Maley to be a nominee for election to the office of Selectboard for a 3-year term at the local election to be held in Wilmington on the 3rd day of March, 2020, was stamped received for record on January 27, 2020 at 2:00 p.m., and

WHEREAS, the Nominating Petition for Mr. Mark O’Maley, “Consent of Candidate” printed on the bottom of each page, where the candidate assents to the printing of his name requiring a legal signature to appear on the ballot as a candidate for the office of Selectboard for a 3-year term was unsigned, and

WHEREAS, on Tuesday, March 3, 2020, Town Meeting Day, Mr. Mark O’Maley’s name appeared on the ballot as a candidate for the office of Wilmington Selectboard, and received the most votes, thereby being elected to the position, and

WHEREAS, as of July 7, 2020, although politely reminded on several occasions by various town officials, that he was required to taken an oath of office, Mr. Mark O’Maley has not appeared at the Office of Town Clerk in the Town of Wilmington to take the oath of office for Selectboard, as required pursuant to 24 V.S.A. § 831, since the election held on March 3, 2020, nor has Mr. Mark O’Maley made other arrangements to take the oath of office, nor has he appeared at any meeting of the Wilmington Selectboard, to take his seat, nor has he performed any other duty expected of a Selectboard member, and

WHEREAS, Mr. Mark O’Maley has not responded to the email, voicemail, or a letter written by the Selectboard Chair, sent certified mail and a return receipt received by the Town, encouraging Mr. O’Maley to respond in person, in writing or by telephone to state his intention regarding the acceptance of office as a member of the Wilmington Selectboard, and

WHEREAS, on March 15, 2020, Mr. Mark O’Maley stated to a reporter via email, “I wrote to the town via snail mail **declining the election results**. I refer you back to the town as to how I ended up on the ballot.” (Attached as Exhibit A, emphasis added), and

WHEREAS, the Town did not receive such letter, but by and through this resolution hereby accepts the representations made in Exhibit A, by Mr. Mark O’Maley, that he informed the Town via United States Mail that he was refusing to accept his election to the office as a member of the Wilmington Selectboard and that he later affirmed his refusal to accept his election to the office as a member of the Wilmington Selectboard to a member of the media, which was in turn relayed to the Town, and

WHEREAS, based on Exhibit A, the Selectboard finds that pursuant to 17 V.S.A. § 2654 Mr. Mark O'Maley has refused to accept election to the office of Wilmington Selectboard member, and

NOW THEREFORE, BE IT RESOLVED that the Selectboard finds as follows:

1. That based on the foregoing recitation, Mr. Mark O'Maley, has refused to accept election to the office of Wilmington Selectboard member pursuant to 17 V.S.A. § 2654.
2. That the seat on the Wilmington Selectboard that Mr. Mark O'Maley has refused to accept, is hereby declared vacant pursuant to 17 V.S.A. § 2654 and 24 V.S.A. § 963.
3. That this resolution and findings shall be posted in at least two public places in the Town of Wilmington and both in and near, the Town Clerk's office within 10 days of the Selectboard's adoption of this resolution. And furthermore, a copy of this resolution and findings shall be sent to Mr. Mark O'Maley via email and certified mail, return receipt requested.
4. That the Selectboard shall fill the vacancy so created above at its next regularly scheduled meeting of August 18, 2020 pursuant to the requirements of 24 V.S.A. § 963(a) to serve until an election is had for the seat.

Dated at Wilmington, Vermont this 7th day of July, 2020.

Thomas Fitzgerald

John Gannon

Vincent Rice

Sarah Fisher

The Vermont Statutes Online

Title 17 : Elections

Chapter 055 : Local Elections

Subchapter 002 : Town Meetings And Local Elections In General

(Cite as: 17 V.S.A. § 2654)

§ 2654. Refusal to serve

A person may refuse to accept election or appointment to any municipal office. (Added 1977, No. 269 (Adj. Sess.), § 1.)

180 Vt. 90
Supreme Court of Vermont.

TOWN OF BRATTLEBORO

v.

Audrey GARFIELD, Patricia DeAngelo, et al.

[Steven K–Brooks](#)

v.

Town of Brattleboro, et al.

Nos. 05–274, 05–314.

|

June 16, 2006.

Synopsis

Background: Town citizen brought action against town and members of the town selectboard, seeking declaratory judgment on the proper method to fill a single vacancy on the selectboard and claiming a violation of the open meeting law. Town filed declaratory judgment action to confirm its decision to make a special appointment to fill the vacancy and not to call a special election. Other town citizens filed notice of appearance in town's case. After consolidating the petitions, the Windham Superior Court, [Karen R. Carroll, J.](#), granted summary judgment in favor of town on the vacancy issue and dismissed citizen's open meeting law claim. Citizens appealed.

Holdings: The Supreme Court, [Reiber, C.J.](#), held that:

[1] town charter required selectboard to fill a single vacancy on the selectboard by special appointment, and thus selectboard was not required to honor citizens' petition for a special election, and

[2] citizen was not “aggrieved” by town's violation of open meeting law and, thus, could not pursue a private right of action.

Affirmed.

West Headnotes (14)

[1] [Towns](#)  [Town board in general](#)

Town charter required town selectboard to fill a single vacancy on the selectboard by special appointment, and thus selectboard was not required to honor citizens' petition for a special election to fill the vacancy; charter provision governing the filling of selectboard vacancy, as the more specific provision, prevailed over general statute governing municipal officers, and plain meaning of the charter language foreclosed the right of town voters to petition for a special election to fill a vacancy. [24 V.S.A. § 963](#).

[2 Cases that cite this headnote](#)

[2] [Appeal and Error](#)  [De novo review](#)

[Appeal and Error](#)  [Taking Case or Question from Jury; Judgment as a Matter of Law](#)

Supreme Court reviews summary judgment decisions de novo and will affirm if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.

[3] [Declaratory Judgment](#)  [Scope and extent of review in general](#)

Supreme Court would review, under exception to mootness doctrine, the issue of the proper method to fill a single vacancy on town's selectboard, even though the town meeting had already occurred; parties commenced a declaratory judgment action on the matter soon after selectboard refused to call a special election to fill the vacancy and the action expired before being fully litigated, and there was a strong likelihood that, were another selectboard member to resign prior to expiration of his or her term, citizens would again seek a special election.

[4] [Action](#)  [Moot, hypothetical or abstract questions](#)

An issue typically becomes moot when it is no longer live or the parties lack a legally cognizable interest in the outcome.

[5] **Action** 🔑 Moot, hypothetical or abstract questions

One exception to the mootness doctrine is if the situation is capable of repetition yet evading review; exception is limited to situations in which (1) the duration of the challenged action was so brief that it could not be fully litigated before it expired, and (2) there is a reasonable expectation or a demonstrated probability that the appellant will be subject to the same action again.

[6] **Towns** 🔑 Legislative control of acts, rights, and liabilities

Whether a legislatively-adopted town charter or a statute is controlling is a matter of statutory construction.

[1 Cases that cite this headnote](#)

[7] **Statutes** 🔑 General and specific statutes

Where two statutes deal with the same subject matter, and one is general and the other specific, the more specific statute controls.

[5 Cases that cite this headnote](#)

[8] **Towns** 🔑 Calling, warrant, or notice

Statutory right of town citizens to petition for special meetings is subject to the restriction that the business the citizens seek to conduct at that meeting is properly delegated to the voters' authority. 17 V.S.A. § 2643(a).

[1 Cases that cite this headnote](#)

[9] **Towns** 🔑 Town board in general

Town citizen was not "aggrieved" by town's violation of open meeting law in failing to post one of the required notices for meeting in which town selectboard interviewed candidates for appointment to vacant selectboard seat, and thus citizen could not pursue a private right of action under the open meeting law, where citizen acknowledged that he had actual notice prior to the meeting. 1 V.S.A. §§ 312(c)(2), 314(b).

[10] **Appeal and Error** 🔑 Pleading

On review of a dismissal, the Supreme Court assumes that all factual allegations pleaded by plaintiff, and reasonable inferences therefrom, are true, and that all contrary allegations are false.

[1 Cases that cite this headnote](#)

[11] **Appeal and Error** 🔑 Failure to State Claim, and Dismissal Therefor

Supreme Court will affirm a dismissal if it is beyond doubt that there are no facts or circumstances under which the plaintiff would be entitled to relief.

[12] **Administrative Law and Procedure** 🔑 Open Meetings Requirement; Sunshine Laws

Vermont's open meeting law implements the state constitutional requirement that officers of government are trustees and servants of the people and are at all times, in a legal way, accountable to them. Const. C. 1, Art. 6; 1 V.S.A. § 311.

[2 Cases that cite this headnote](#)

[13] **Administrative Law and Procedure** 🔑 Open Meetings Requirement; Sunshine Laws

Open meeting law is to be liberally construed. 1 V.S.A. § 310 et seq.

[14] **Towns** 🔑 Town board in general

Fact that no formal action or decision was made at meeting of town's selectboard, in which selectboard interviewed candidates for appointment to vacant selectboard seat, did not preclude town citizen from showing that he was "aggrieved" by town's failure to post one of required notices for the meeting under the open meeting law, for purposes of determining

whether citizen could pursue a private right of action under the law. 1 V.S.A. §§ 312(c)(2), 314(b).

Attorneys and Law Firms

**1159 Robert M. Fisher of Fisher & Fisher Law Office, Brattleboro, and Jodi French, Law Clerk (on the brief), West Dummerston, for Plaintiff–Appellee Town of Brattleboro (05–274) and Defendants–Appellees Town of Brattleboro, et al. (05–314).

Steven K–Brooks, *pro se*, Brattleboro, Plaintiff–Appellant K–Brooks (05–314).

Paul S. Gillies of Tarrant, Marks & Gillies, Montpelier, for Defendants–Appellants Garfield, DeAngelo, et al. (05–274).

Brian P. Monaghan, Montpelier, for amicus curiae Vermont League of Cities and Towns (05–274).

Present: REIBER, C.J., and JOHNSON and BURGESS, JJ., and GIBSON, J. (Ret.) and COOK, D.J. (Ret.), Specially Assigned.

Opinion

REIBER, C.J.

*91 ¶ 1. This consolidated appeal arose out of a dispute regarding the proper way to fill a single vacancy on the Town of Brattleboro selectboard. Appellants are various Brattleboro citizens who argue that the law provides for a special election. Appellee, Town of Brattleboro, argues that the remaining board members must fill the vacancy by appointment. On cross-motions for summary judgment, the Windham Superior Court concluded that the law requires appointment. Also on appeal is the trial court's dismissal of appellant Steven K–Brooks's open meeting law claim. We affirm.

¶ 2. The facts are not disputed. On March 1, 2005, the Town of Brattleboro held its annual meeting and election. One selectboard *92 member resigned his position the next day, leaving one year of his three-year elected term remaining. Appellants **1160 Garfield, DeAngelo et al. circulated a petition for a special election to fill the vacancy and submitted it, signed by more than five percent of Brattleboro voters, to the selectboard. Eight days later, on April 5, 2005,

the selectboard did not call a special election but instead proceeded to fill the vacancy by appointment.

¶ 3. Appellant K–Brooks then filed a petition for declaratory judgment on the vacancy issue and also alleged an open meeting law violation, naming the Town and members of the selectboard as defendants. The Town filed its own declaratory judgment action to confirm its decision to make a special appointment and not to call a special election. The remaining citizens, other than Mr. K–Brooks, filed their notice of appearance in the Town's case. The Windham Superior Court consolidated the petitions, and all parties filed motions for summary judgment.¹ The Town also moved to dismiss appellant K–Brooks's open meeting law claim.

¶ 4. On June 30, 2005, the trial court decided in favor of the Town. The court ruled that the Brattleboro selectboard vacancy was properly filled by appointment until the next election and that the voters lacked the right to petition for a special election. The court also dismissed the open meeting claim. This appeal followed.

I.

[1] [2] ¶ 5. The first issue on appeal is whether, as appellants argue, the Brattleboro selectboard was required to hold a special election to fill a single vacancy on the selectboard when petitioned to do so by five percent of the voters. The Town argues that the law of Brattleboro requires filling of vacancy by special appointment and does not allow a special election. We review the summary judgment decision de novo and will affirm if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *Czechorowski v. State*, 2005 VT 40, ¶ 9, 178 Vt. 524, 872 A.2d 883 (mem.). We conclude that the selectboard properly filled the vacancy by appointment and was not required to honor the petition for a special meeting.

[3] [4] [5] *93 ¶ 6. As an initial matter, we must review this issue for mootness because Brattleboro's 2006 town meeting has come and gone. 24 V.S.A.App. ch. 107, § 2.2(b) (Brattleboro officers elected on first Tuesday in March). An issue typically becomes moot when it is no longer “live or the parties lack a legally cognizable interest in the outcome.” *In re Vt. State Employees' Ass'n*, 2005 VT 135, ¶ 10, 179 Vt. 578, 893 A.2d 338 (mem.) One exception to the mootness doctrine is if the situation is capable of repetition yet evading review. *Holton v. Dep't of Employment & Training*, 2005 VT

42, ¶ 16, 178 Vt. 147, 878 A.2d 1051. The exception is limited to situations in which “(1) the duration of the challenged action was so brief that it could not be fully litigated before it expired, and (2) there is a reasonable expectation or a demonstrated probability that the appellant will be subject to the same action again.” *Id.*

¶ 7. We review the matter because both factors are met. The parties commenced this litigation soon after the selectboard refused to call a special election and the action expired before being fully litigated. As for the second prong, the town charter has not been amended in the interim so ****1161** there is a strong likelihood that, were another selectboard member to resign prior to expiration of his or her term, appellants would seek the same special election remedy to fill the vacant seat. We proceed to the merits.

¶ 8. The subject of how to fill a single vacancy on the Brattleboro selectboard is covered in both the Brattleboro Town Charter and 24 V.S.A. § 963 (regarding municipal officers generally). The applicable provision of the charter, codified at 24 V.S.A.App. ch. 107, § 4.4(c), reads:

When a vacancy occurs on the board, the remaining selectboard shall fill the vacancy by appointment until the next election. If there is more than one vacancy, the board shall call a special election to fill the vacancies for the remainder of the terms.

The general statute, 24 V.S.A. § 963, reads:

When a vacancy occurs in any town office, the selectpersons forthwith by appointment in writing shall fill such vacancy until an election is had; except that in the event of vacancies in a majority of the board of selectpersons at the same ***94** time, such vacancies shall be filled by a special town meeting called for that purpose.

The trial court held that the plain language of both provisions requires a special election to be held if more than one seat

were vacant (in the case of the charter), or if a majority of the seats were vacant (in the case of § 963). Where only one vacancy exists, the trial court ruled, both the charter and the statute provide that it be filled by appointment until the next regularly scheduled election.

¶ 9. On appeal, appellants argue that the charter language “until the next election” is “all but identical” to the phrase in the general statute, “until an election is had,” and that because the charter is “silent on the question of the voters' right to petition for a special election” and the general law favors the right to petition, the general law must prevail. Specifically, they argue that “until the next election” signifies not only the next annual town meeting but potentially a special election as well, and that their right to petition for a special election is preserved in a separate statute requiring the selectboard to call a special meeting upon application of five percent of the voters. 17 V.S.A. § 2643(a) (“The legislative body ... shall call a special meeting on the application of five percent of the voters.”). We do not agree.

[6] [7] ¶ 10. Whether the legislatively-adopted town charter or the statute is controlling is a matter of statutory construction. *Looker v. City of Rutland*, 144 Vt. 344, 346, 476 A.2d 141, 142–43 (1984). We apply the long-standing rule of statutory construction that where two statutes deal with the same subject matter, and one is general and the other specific, the more specific statute controls. *Id.* at 346, 476 A.2d at 143 (applying rule to conflict between city charter and more general statute). We conclude that the charter prevails because it is more specific to the Town of Brattleboro than 24 V.S.A. § 963.

¶ 11. We next turn to the charter language itself. The plain meaning of the charter language forecloses the right of the voters to petition for a special election. Were there more than one vacancy, the charter would grant to voters the right to fill those vacancies via a special election. In the case of a single vacancy, as is the situation here, the charter confers upon the selectboard the mandatory duty to fill the vacancy by appointment. The plain language of the ultimate clause in the charter, “until the next election,” employs the definite article, “the,” signifying the selectboard's duty to fill the vacancy until ****1162** *the next regularly scheduled* election. Contrasting the charter language with that of the general statute is illuminating. The statute's language, “until ***95** an election is had,” uses the indefinite article, “an,” to reference some imprecise election in the future, leaving open the possibility of five percent of voters petitioning for

a special election under 17 V.S.A. § 2643(a). Section 962, antecedent to § 963, also provides context to § 963's indefinite language: "A town at a special meeting may fill a vacancy in a town office." 24 V.S.A. § 962. Even though § 963 automatically requires a special election if a majority of seats were vacant, § 962 is permissive and would allow a special election to fill a single vacant seat. The town charter includes no similarly permissive neighboring statute and no indefinite language. Its plain language requires the selectboard to fill the seat until the next regularly scheduled election.

[8] ¶ 12. Accordingly, the selectboard was not required to call a special meeting upon receiving a petition from five percent of the voters pursuant to 17 V.S.A. § 2643(a). That statutory right to petition for special meetings is subject to the restriction that the business petitioners seek to conduct at that meeting is properly delegated to the voters' authority. *Royalton Taxpayers' Prot. Ass'n v. Wassmansdorf*, 128 Vt. 153, 159–60, 260 A.2d 203, 207 (1969) (holding that where authority was delegated to town listers and not to town meeting, selectboard not required to call special meeting upon petition of five percent of voters; statute not intended to compel special meeting for a useless, frivolous, or unlawful purpose). Because the charter plainly and unambiguously designates the power to fill a single vacancy only to the selectboard, Brattleboro voters lack the authority to fill a single vacancy and appellants' petition did not present business proper for a special meeting. Moreover, another statute in Title 17 specifies that where a municipal charter "provides for procedures other than those established by this [local elections] chapter, the provisions of that charter shall prevail." 17 V.S.A. § 2631. Because the charter creates a separate and specific avenue for filling a single vacancy on the Town of Brattleboro selectboard without leaving room for the special meeting petition, the general provision entitling voters to a special meeting upon petition of five percent of the voters does not apply.

¶ 13. We note appellants' argument that we should harmonize the charter and the statute, *Lomberg v. Crowley*, 138 Vt. 420, 423, 415 A.2d 1324, 1326 (1980) (superseded by statute on other grounds), and, to resolve any potential differences, apply the principle of construing a town charter strictly against the town so that the right of the voters to petition for a special meeting is preserved. *E.B. & A.C. Whiting Co. v. *96 City of Burlington*, 106 Vt. 446, 465, 175 A. 35, 42–43 (1934) (presumption is that the Legislature "granted ... in clear and unmistakable terms all that it intended to grant"). Our decision is not discordant with these principles. The

proper way to harmonize the two provisions is by choosing the more specific over the general. "Where two statutes cover the same subject and one is more specific than the other, we harmonize them by giving effect to the more specific provision according to its terms." *Our Lady of Ephesus House of Prayer, Inc. v. Town of Jamaica*, 2005 VT 16, ¶ 16, 178 Vt. 35, 869 A.2d 145 (quotation omitted). Nor does our decision disregard the principle of construing a town charter against the municipality; as discussed above, our conclusion is based on the charter's plain meaning and no further construction is warranted. The Brattleboro charter does not allow for the possibility of petitioning for a special election, **1163 and the selectboard properly declined the voters' petition.²

II.

[9] ¶ 14. Appellant K–Brooks also appeals the trial court's dismissal of his open meeting law claim. The meeting at issue was held for the purpose of interviewing candidates for appointment to the vacant selectboard seat, and Mr. K–Brooks alleged that it was not properly warned in accordance with the statute. The trial court dismissed the claim because there was no action taken at the meeting and Mr. K–Brooks did not make a proffer of injury to demonstrate how he was aggrieved by the inadequate warning.

[10] [11] ¶ 15. On review, we assume that all factual allegations pleaded by plaintiff, and reasonable inferences therefrom, are true, and that all contrary allegations are false. *Amiot v. Ames*, 166 Vt. 288, 291, 693 A.2d 675, 677 (1997). We will affirm the dismissal if it is "beyond doubt" that there are no facts or circumstances under which the plaintiff would be entitled to relief. *Id.*

[12] [13] ¶ 16. Vermont's Open Meeting Law implements the state constitutional requirement "that officers of government are 'trustees and servants' of the people and are 'at all times, in a legal way, accountable to them.'" *Trombley v. Bellows Falls Union High Sch. Dist. No. *97 27*, 160 Vt. 101, 104, 624 A.2d 857, 860 (1993) (quoting Vt. Const. ch. I, art. 6); see 1 V.S.A. § 311 ("[T]he legislature finds and declares that [officers of the government] in this state exist to aid in the conduct of the people's business and are accountable to them pursuant to Chapter I, Article VI of the Vermont constitution."). It protects the interest of the public to hold its elected officers accountable by, among other ways, requiring meetings of a public body to be "open to the public at all times," except when in executive session, 1

V.S.A. § 312(a), and by requiring that the public be given a “reasonable opportunity to express its opinion” on matters being considered. *Id.* § 312(h). The law is to be liberally construed. *Blum v. Friedman*, 172 Vt. 622, 623, 782 A.2d 1204, 1206 (2001) (mem.). The law also provides a private right of action for “aggrieved” persons to seek injunctive relief or declaratory judgment for violations of the law. 1 V.S.A. § 314(b). We have held that petitioners must plead sufficient injury to a protected interest to show they are aggrieved under the statute and therefore have standing to challenge any alleged violation of the law. *Blum*, 172 Vt. at 624, 782 A.2d at 1207; *Trombley*, 160 Vt. at 106, 624 A.2d at 861.

¶ 17. In his amended petition for declaratory judgment, Mr. K–Brooks alleged that, “[o]n April 4, 2005, the Brattleboro Selectboard knowingly held a meeting for the purpose of interviewing candidates for appointment to the vacant Selectboard Seat, which was not publically announced at least 24 hours before the meeting in the manner required by [1 V.S.A. § 312(c)(2)],” and that “[i]t is a habitual practice by the Town of Brattleboro to ignore the requirements of Vermont’s Open Meeting Law thereby violating the rights of the Petitioner and of other town residents and voters.” In his prayer for relief, petitioner sought “remedial education” or fines.

**1164 ¶ 18. In its answer and motion to dismiss, the Town conceded that it did not properly warn the meeting because it failed to post one of the notices required by 1 V.S.A. § 312(c) (2). The law’s notice requirements are clear: at least twenty-

four hours before the meeting, the time, place, and purpose of a meeting must be publicly announced and notices must be posted in or near the municipal clerk’s office and in at least two other public places. *Id.* The Town denied violating the Open Meeting Law, however, on the ground that because it only interviewed candidates for appointment to fill the vacancy at the April 4, 2005 meeting but otherwise took no action, petitioner could show no harm. In his response, Mr. K–Brooks acknowledged having had actual notice of the meeting.

[14] *98 ¶ 19. We find unavailing the Town’s argument and trial court’s reasoning that Mr. K–Brooks could not be harmed because no formal action or decision was made at the meeting. In *Blum*, we held that the plaintiff pled sufficient injury where he was denied admission to a meeting at which the town was conducting negotiations but not taking any formal action. 172 Vt. at 624, 782 A.2d at 1207. We uphold the trial court’s ruling, however, because Mr. K–Brooks did not allege in his amended petition how he was harmed by the Town’s failure to post one copy of the notice the requisite twenty-four hours in advance of the meeting. Indeed, he acknowledged that he did have actual notice prior to the meeting. Because Mr. K–Brooks failed to allege any injury, he was not “aggrieved” under the statute and so cannot pursue a private right of action.

Affirmed.

All Citations

180 Vt. 90, 904 A.2d 1157, 2006 VT 56

Footnotes

- 1 Although Mr. K–Brooks sued the members of the Brattleboro selectboard in addition to the Town, for the sake of clarity, we will refer to all appellees as the Town. We will refer to all appellants collectively except when discussing the distinct claim of appellant K–Brooks.
- 2 We note that appellants trace the history of 24 V.S.A. §§ 962 and 963 to support their argument that voters retain the right to petition for a special election when a single seat on a town selectboard is vacant. Because the Brattleboro charter is more specific and its plain language controls, we find the legislative history of §§ 962 and 963 unnecessary to our analysis.

The Vermont Statutes Online

Title 24 : Municipal And County Government

Chapter 033 : Municipal Officers Generally

Subchapter 006 : Vacancies In Town Offices

(Cite as: 24 V.S.A. § 963)

§ 963. Duties of selectboard; special meeting

(a) When a vacancy occurs in any town office, the selectboard forthwith by appointment in writing shall fill such vacancy until an election is had; except that in the event of vacancies in a majority of the selectboard at the same time, such vacancies shall be filled by a special town meeting called for that purpose.

(b) The selectboard shall file an appointment made under this section in the office of the town clerk and the town clerk shall duly record it in the book of town records.

(c) If there are no selectboard members in office, the Secretary of State shall call a special election to fill any vacancies and for that interim shall appoint and authorize the town clerk or another qualified person to draw orders for payment of continuing obligations and necessary expenses until the vacancies are filled. (Amended 1981, No. 239 (Adj. Sess.), § 28; 1993, No. 115 (Adj. Sess.), § 2, eff. March 30, 1994; 2017, No. 50, § 60.)