



TOWN MANAGER
TOWN OF THOMASTON
13 VALLEY STREET
THOMASTON, MAINE 04861-0299
TEL: (207) 354-6107

July 24, 2023

Town of Thomaston Responds to Citizen Requests for Secret Ballot Referendum

On June 27, 2023, the Thomaston Select Board received a letter from the law firm Preti Flaherty on behalf of an unnamed Thomaston resident. The Select Board received another letter on July 3, 2023, signed by Thomaston resident Anne Perkins, which contained a list of typed names without signatures that inferred those individuals supported Ms. Perkin's letter. Both letters alleged procedural errors relating to Article 5 of the warrant for the Annual Town Meeting held on June 14, 2023, and requested another vote on Article V by secret ballot election this fall.

With Article V, Thomaston residents voted to authorize the Select Board to enter into a contract to sell, for a price of not less than \$52,655 per acre, a parcel of land at the Thomaston Green comprising of no more than 1.5 acres and having frontage on Route 1, to Mid Coast Health Net, d.b.a. "The Knox Clinic", for the purpose of constructing a community health center. Article 5 passed by written ballot vote with 159 in favor and 155 against.

In preparation of the Annual Town Meeting and the vote on Article V, the Town engaged with and notified the public through workshops, public hearings, press releases, newsletters, the Town website, social media, emails, and discussions with citizens. In doing so, the Select Board determined an open Town Meeting was the best way to vote on this matter. The tradition of the town meeting in Maine goes back centuries and is the purest and most transparent way to conduct Town business. The Town of Thomaston has held its Annual Town Meeting on the second Tuesday and Wednesday of June for decades.

The June 14th Annual Town Meeting had a historical turnout of residents, causing a slight delay to the start of the meeting to ensure that all voters waiting in line were checked-in and able to participate. No voters were refused entrance to the Town Meeting and Town staff and volunteers worked hard to allow for an orderly meeting.

The Town has taken the allegations in the Preti Flaherty and Anne Perkins letters seriously and had them reviewed by the law firm Eaton Peabody, the Town's legal counsel. Eaton Peabody's review of this issue concluded the Town ran a fair and effective town meeting and legally has done nothing wrong. The Town maintained the election and town meeting process with integrity and followed all state election laws.

The Select Board will continue to advance the will of the voters on Article V and engage with the Knox Clinic in order to bring a much needed health clinic to Thomaston that will benefit all of our citizens.

###

July 24, 2023

Via Email

Select Board
Town of Thomaston
13 Valley Street
Thomaston, ME 04861

RE: 2023 Thomaston Town Meeting; Article V

Dear Chair Giese and Select Board Members,

This letter is in response to your request that my law firm, Eaton Peabody, review a letter dated June 26, 2023 from the law firm Preti Flaherty addressed to the Select Board with the reference line "Town Meeting Procedural Errors and Request for Secret Ballot Election" ("the Letter"). The Letter describes a series of what it classifies as "procedural errors" regarding events leading up to and actions taken at the June 14, 2023 Thomaston Annual Town Meeting ("the Town Meeting") specific to Article V of the warrant that addressed whether the Town should sell a portion of the "Thomaston Green" to develop a health clinic.

Our office has reviewed the Letter, spoken with Town employees that were at the Town Meeting, listened to a recording of the portion of the Town Meeting when Article V was taken up, and conducted research on the issues raised in the letter. In doing so, we have concluded the Town likely acted in accordance with the laws of the State of Maine in its actions: (1) leading up to the Town Meeting; (2) when registering voters at the Town Meeting; and (3) conducting the Town Meeting.

However, ultimately, it is within the discretion of the Select Board whether to bring this issue back to the voters by secret ballot vote at a later date.

Leading up to the Town Meeting

The Select Board has sole authority to determine whether an article will be voted on at an open town meeting or by secret ballot, except when a voter's petition states the manner of voting on the article or a charter requires otherwise. Voters cannot require the municipal officers to put an article on an open town meeting or secret ballot warrant prior to or when voting at town meeting.

No citizen petition was turned in to the Thomaston Town Office regarding Article 5 requiring a secret ballot vote. Further, prior to the Town Meeting, the Town made numerous efforts to engage voters regarding the Thomaston Green. Several planning, budget, and select board meetings were held regarding the three Thomaston Green article questions in advance of the Town Meeting. Moreover, the Select Board held a special public hearing on the three Thomaston Green article questions on June 1, 2023. This hearing was not required by law, but was held in order to provide further transparency and dialog on the issue. In addition, the Town sent out press releases, newsletters, website and Facebook posts, and emails with information on the vote while Town officials answered any inquiries from the public who called or stopped by the Town Office. The Town Meeting was properly noticed and held on the same day as it has been for decades.

It was ultimately within the Select Board's discretion to hold the vote on Article V at the Annual Town Meeting and our review finds no procedural errors by the Town leading up to the meeting.¹

Registering Voters at Town Meeting

Town staff disputes the characterization of events as set out in the Letter and is adamant that they did not refuse any voters at check in for the Town Meeting.

As was explained to Eaton Peabody, when the Town Clerk was informed that two people arrived late to the Town Meeting and wanted to vote, it was 8:30 PM and voting was already in progress on Article V – the Town Meeting was scheduled to start at 6 PM. A ballot clerk who had cast their vote on Article V went to assist with the request and found that the two individuals were not listed on the Incoming Voter List, meaning they were not eligible to vote without first completing a Voter Registration Application with the Registrar or Deputy Registrar. At that time, the

¹ A letter dated June 30, 2023 from Thomaston resident Anne E. Perkins addressed to the Select Board asserts that many voters (listing approximately 70 names) in Thomaston that would have come to vote on Article V were unable to attend the Town Meeting due to reasons including “disabilities, family obligations, work requirements, inadequate childcare” and requests the Select Board “immediately call a special town meeting to reconsider only Article V by voting with secret ballot election in November.” The letter also includes a list of six names of people that attended the Town Meeting but left prior to voting on Article V due to “fear and claustrophobia and feeling sick or a personal demand to leave.”

Taking these assertions as true, they do not create a legal basis for the Select Board to call a special town meeting and vote by secret ballot in November 2023 to reconsider Article V. As discussed in this letter, I find no legal deficiencies with the decisions the Select Board made leading up to the Town Meeting or in how the Town staff registered voters and operated the Town Meeting.

Moreover, the decision to vote on Article V via written ballot and not by a hand vote at the Town Meeting addressed concerns raised about people having to vote on a contentious issue at open town meeting. The written ballot allowed participants to vote with anonymity.

Town Clerk and the Deputy Clerk/Registrar were distributing and collecting written ballots for Article 5. The second Deputy Registrar was in line to vote. When the Deputy Clerk went to assist the two individuals, they could not be located.

When considering these facts, Eaton Peabody finds no legal deficiencies with how the Town staff conducted voter registration at the Town Meeting. Moreover, if the two individuals had stayed to complete a Voter Registration Application, and then voted, it would not have changed the outcome of the Article 5 vote – the article passed with 4 more votes in favor than against.²

Conducting the Town Meeting

State law provides discretionary powers to a moderator to moderate a town meeting. *See* 30-A M.R.S. § 2524(3). Moreover, State law does not require a particular set of procedural rules when presiding over a town meeting; any town meeting may adopt any reasonable rules of procedure. *See Bullard v. Allen*, 124 Me. 251, 260 (Me. 1925). As the Maine Municipal Association Moderator’s Manual, *A Guide to Town Meeting*, 7th ed., 2021 (“the MMA Manual”) notes, use of the Manual is within the discretion of the moderator, and applying the MMA Manual rules neither binds nor limits the moderator.

With respect to the assertions in the Letter regarding a motion to table Article V indefinitely and have it placed on a secret ballot referendum at a later date, it is in my judgment that the Moderator’s decision on the motion was within his discretion and reflects the general historical disfavor of such motions in most Maine communities. Indeed, as the MMA Manual notes, “[t]his Manual’s Table does not include motions to pass over or to table because it presumes that a town meeting will ordinarily want to take up and dispose of all of its business.” *MMA Manual* at 12. The MMA Manual further cautions against the use of such motions while leaving it to the discretion of the moderator, by framing the passage of such motions as “*if* such a motion is *allowed* to go forward” *Id* (emphasis added).

Further, the MMA Manual strongly cautions moderators to “be especially on guard to see that a meeting does not become bogged down, sidetracked, or unruly.” *MMA Manual* at 3. The MMA Manual further cautions that “[s]ometimes a voter may try to use technical parliamentary rules having little application in town meeting [;] [t]hese may confuse the average voter and delay the meeting’s progress.” *Id*. This section concludes by stating that the moderator should “promptly and firmly inform the voter that the particular rule proposed is not being used or is inappropriate and that the motion is therefore out of order” *Id*. At the Town Meeting, the Moderator

² Also, due to their late arrival, had they stayed to complete a Voter Registration Application the two individuals may not have been processed in time to participate in the vote on Article 5.

promptly informed the movant that her motion was out of order and provided an explanation that such a motion would not be used and the Town Meeting would proceed with voting on Article V.³

With respect to the Moderator's ruling on a motion to appeal the Moderator's ruling on the motion to table Article V, the Moderator's ruling was likely not legally deficient. The Moderator used his discretion not to take up a motion to appeal a previously denied, disfavored procedural motion.

There is a dearth of case law in Maine on the issue of whether a court would overturn a moderator's decision on procedural motions such as those made regarding Article V at the Town Meeting. Because of this, I am not positioned to say with any certainty that a court would not rule against the Moderator's actions and then would require the Town to hold another vote on Article V. However, overall, and although the matter is not free from doubt, in my judgment a court would more likely than not uphold the Town Meeting vote on Article V. As the Moderator noted in making his decision not to take up a vote to table Article V, the Select Board determined that Article V should appear on the Town Meeting warrant to be voted on that night. Article V then passed, albeit by a narrow majority. I suspect that a court would be hesitant to disturb the will of the majority of voters at the Town Meeting.

* * *

Ultimately, it is within the discretion of the Select Board whether to bring this issue back to the voters by secret ballot vote. However, this is a policy consideration, not a legal consideration, to be left to the sound judgment of the Select Board.

Sincerely,

/s/ Patrick W. Lyons
EATON PEABODY
Attorneys for the Town of Thomaston

³ It is of further note that in communities that do use a motion to pass over or table, the MMA Manual suggests a motion to pass over "should require a unanimous vote" or "surely, at least a two-thirds majority should be required, as it is akin to a motion to table." *MMA Manual* at 12. Considering this, it is unlikely that such a motion to table Article V would have passed by a two-thirds majority, as Article V ultimately passed by a majority of the Town Meeting.

May 23, 2023

Via FedEx and Email
Select Board
Town of Thomaston
13 Valley Street
Thomaston, ME 04861

RE: Town Authority with Respect to Town Meeting Warrant Article #5

Dear Select Board Members:

On behalf of Cindy Lang, I am writing to address certain questions previously raised by the Select Board with respect to its authority under Maine law. As you're all well aware, the annual town meeting is currently scheduled for June 14th. Article #5 of the town meeting warrant requests that voters authorize the Town to sell a portion of the Thomaston Green to the Knox Clinic by an open meeting vote. During the Select Board's May 8th meeting, members suggested that they had no choice but to put forth Article #5 for a vote by open town meeting. This is incorrect.

Title 30-A, section 2528, subsection 5 of the Maine Revised Statutes provides as follows:

By order of the municipal officers or on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the municipal officers shall have a particular article placed on the next ballot printed or shall call a special town meeting for its consideration.

This particular language has been interpreted by the Maine Municipal Association to permit municipal officers to choose whether a particular article should be voted on as part of a secret ballot referendum election. Within its Town Meetings and Elections Manual, the MMA provides the following guidance to its members: "In a town that has accepted the secret ballot process for election of officials, other business items may also be decided by secret ballot if the municipal officers order... that the particular issue be decided by secret ballot vote."¹

The Maine Law Court has also had the opportunity to interpret the scope of the authority granted by Section 2528. In *Sweetall v. Town of Blue Hill*, the Law Court states, succinctly, that "Section 2528(5) places discretion in the municipal officers as to whether an initiated question be placed on a printed ballot, or dealt with at a special town meeting."²

¹ Town Meeting and Elections Manual, Maine Municipal Association, Jan. 2020, at p. 5 (emphasis added).

² See *Sweetall v. Town of Blue Hill*, 661 A.2d 159, 162 (Me. May 2, 1995).

PRETI FLAHERTY

May 23, 2023

Page 2

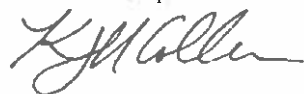
Based upon the prior holdings of the Law Court and the established interpretation of Section 2528, virtually all municipal attorneys in Maine would agree that the municipal officers of any secret ballot town have broad discretionary authority to decide whether a specific article should be placed on a referendum ballot or a town meeting warrant. The Thomaston Select Board is no different in this respect. The Select Board may amend its prior approval of the Town meeting warrant and remove Article #5, and exercise its authority to place Article #5 on a printed ballot for a referendum election to be held later, ideally at the November 2023 election.

During the May 19th Economic Development Committee meeting, Chair Giese characterized this as a request to change the form of the Town's government. To be clear, that is not what is being requested. All that is being asked is that Article #5 be removed from the approved Town meeting warrant and placed on a ballot for a referendum election in November. This would have no impact on the Town's form of government or the conduct of the June 14th town meeting and is entirely permitted by state law. As the Select Board is aware, the 2022 vote regarding development of the Green was taken by way of a secret ballot election. Turnout at that election approximately tripled that at the average open town meeting.

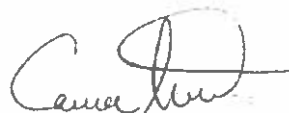
The Town has debated the question of developing Thomaston Green for some time and that debate has created some divisions among residents. The Town's consultant emphasized the need for broad community involvement in all decisions related to the Green. It is critical that the plan for the Green be considered by as many residents as possible to ensure that any actions taken truly have the blessing of the residents. A town meeting held at 6:00pm on a weeknight is sure to result in reduced turnout. Presenting Article #5 at the June 14th town meeting will prevent many Thomaston residents – particularly families and the elderly - from expressing their opinions on the development of the Green. This critical decision will be left to the hands of a minority.

A referendum election is the only way to provide all residents, not only those with a free weeknight, with the ability to make their voices heard. For these reasons, I urge you to exercise your authority to remove Article #5 from the June 14th warrant and schedule a municipal referendum election on this important issue for this coming Fall.

Sincerely



Kristin M. Collins



Cameron A. Ferrante



RECEIVED
6/27/23

Cameron A. Ferrante
cferrante@preti.com
207.791.3274

Portland, ME
Augusta, ME
Concord, NH
Boston, MA
Washington, DC

June 26, 2023

Via FedEx

Select Board
Town of Thomaston
13 Valley Street
Thomaston, ME 04861

RE: Town Meeting Procedural Errors and Request for Secret Ballot Election

Dear Select Board Members:

We write to express our serious concerns with the procedural errors which tainted the annual town meeting vote on Article 5. As was made clear to the Select Board on numerous occasions both before and during the town meeting, the possible sale and future use of the Thomaston Green is an extremely contentious issue within Thomaston. Numerous voters contacted the Select Board well in advance of the town meeting and spoke passionately at the June 1st public hearing concerning Article 5 to request that it be removed from the annual town meeting warrant and considered in a later secret ballot election. These residents' valid concerns about reduced voter turnout and their inability to participate were ignored or dismissed out of hand. As a result, numerous Thomaston residents were prevented from participating in the town meeting and only 300 votes were cast regarding Article 5—far less than the 716 previously cast in the 2022 secret ballot election concerning the Green.

Beyond the issue of depressed turnout, the following events that occurred during the annual town meeting call into question the validity of the Town's action and require that the Select Board call a special town meeting to reconsider the vote on Article 5:

A. Voters were improperly prevented from participating in the vote on Article 5

While Article 5 was being voted upon, Town Clerk Melissa Stevens was approached by at least two voters who had arrived late to the town meeting. Despite having additional clerks who were not involved in handing out written ballots and despite having previously checked in voters arriving after the town meeting was called to order, Clerk Stevens refused to allow the voters to check in and participate in the vote on Article 5. There was no basis for Clerk Stevens to deny these voters the ability to check in and participate in ongoing voting. The written ballot process continued for approximately 30 minutes after Clerk Stevens denied these voters the ability to participate and Article 5 had not been amended and was being voted on in the form presented on the town meeting warrant. These voters had ample knowledge and understanding of what was being voted on and had sufficient time in which to cast their written ballots. These

voters intended to vote against Article 5 and, had they been permitted to participate, the vote on Article 5 may have had a different result.

B. The Moderator inappropriately denied voters' motions and assumed powers given solely to the town meeting

When Article 5 was moved, Emily Maniscalco was recognized by Mr. Newcomb and immediately moved to table or pass over Article 5. Ms. Maniscalco Motion was intended to allow the Town's voters to decide Article 5 on a future date, with more information and voter participation. Mr. Newcomb ruled this motion to be out of order, asserting that the Town *must* take action on all warrant articles. This is a gross misstatement of established procedural rules and practice for town meetings. The Maine Moderator's Manual explicitly permits motions to table and endorses their use as a way for town meetings to avoid voting down unpopular or contentious articles or articles that are driven by special interests. In issuing his ruling, Mr. Newcomb effectively denied the Town's voters the ability to obtain additional information they had requested on June 1st and clearly desired at the annual town meeting.

Upon hearing Mr. Newcomb's incorrect ruling, Cindy Lang rose and was recognized. Ms. Lang moved to appeal the ruling on the motion to pass over. As is plainly stated within the Maine Moderator's Manual, *any* voter is permitted to appeal the ruling of the moderator on a procedural matter. When such a motion is made, the moderator may not question or deny the appeal but is *required* to put it to a vote of the full body. However, despite this clear mandatory procedure, Mr. Newcomb refused to allow Ms. Lang to appeal his ruling on the motion to table, asserting that appeals were only available for rulings on vote counts announced by the moderator. This is entirely incorrect and confuses an appeal of the moderator's ruling with a challenge to the moderator's announcement of a vote. Mr. Newcomb's failure to follow established procedures denied Ms. Lang and everyone else who vocally supported the motion to table their right to be heard on the issue. Furthermore, Mr. Newcomb's actual knowledge of the difference between an appeal of a procedural ruling and a vote challenge was made clear when he later invited seven voters to challenge the hand-count of the vote on Article 5. Mr. Newcomb's actions effectively robbed the town meeting of its exclusive authority as the Town's legislative body by asserting that his procedural rulings could not be questioned, even where there was clear disagreement with his ruling.

Mr. Newcomb's actions are brought into greater doubt by the fact that, after having made these incorrect rulings, he proceeded to ignore dozens of voters waiting to speak and offer amendments to Article 5 and instead passed over them to recognize Doug Erickson, chair of the Town's Budget Committee—seated *behind* him—who moved for an immediate vote on Article 5. This questionable action cut off debate on Article 5 and denied the town meeting the ability to consider amendments and comments which could have addressed many of the concerns that had been expressed about selling off a portion of Thomaston Green without any clear understanding of the terms or conditions of such a sale.

These multiple procedural deficiencies call into question the validity of the town meeting's approval of Article 5. We request that the Select Board act within the next ten (10)

PRETI FLAHERTY

June 26, 2023

Page 3

days to place Article 5, as previously presented, on the ballot for the November election, pursuant to 30-A M.R.S §2528. Should the Select Board fail to do so, we are prepared to pursue all legally available means to overturn the town meeting's approval of Article 5.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristin M. Collins". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kristin M. Collins

A handwritten signature in black ink, appearing to read "Cameron A. Ferrante". The signature is cursive and somewhat stylized, with a large initial "C" and "F".

Cameron A. Ferrante



30 June 2023

Dear Thomaston Select Board Members:

We are residents and registered voters of the Town of Thomaston who were disenfranchised by the manner in which the June 14th Town Meeting method of voting was conducted. We write today to request that the Select Board immediately call a special town meeting to reconsider only Article 5 by voting with secret ballot election in November.

Thomaston Green is the welcoming entrance to the Town of Thomaston, and the entire MidCoast. This unique 15.5 acres of Open Space is an essential asset and resource for our community as it is the only public Open Space. This is an irreplaceable invaluable asset and one of its kind public property in all of Maine!! Indeed, Thomaston has a "rare jewel". The Town's residents have repeatedly expressed their desire to preserve and invest in public recreational space within Thomaston. While we appreciate the need for development in Thomaston, dividing the Green and selling it off for private commercial development goes against the opinions that have been repeatedly expressed to the Select Board and the Town committees studying the Green and votes against development over the past 18 years. As quoted in Mainebiz.biz the developer the Town worked with said: "Richard [Berman] and I both think that it makes a great park — and probably ought to stay one. It's a great asset for the town and could probably be even more so if the town committed to a thoughtful recreational master plan to use it more intensively." "Not many communities have that type of open space in their core," says Kevin Bunker of Developers Collaborative"

We and other Thomaston residents pleaded with the Select Board for months before June 14th to have the future of Thomaston Green decided by secret ballot election, rather than at an open town meeting. We and others made those requests because we believed that voters had not been given enough information to make an informed decision on Article 5 and knew that an open town meeting, held on a weeknight, a school night, would prevent many Thomaston residents from attending and deciding the future of the Thomaston Green. Those pleas were ignored and it comes as no surprise that the June 14th meeting saw nearly 400 fewer votes than cast in the most recent election affecting Thomaston Green.

While there are many reasons why individuals might not have a spare four hours on a weeknight - disabilities, family obligations, work requirements, inadequate childcare, - there is only one reason why those issues and more disenfranchised Town voters. You made the decision to vote on Article 5 by Town meeting method on June 14th and, as a result of your decision, **each of us was prevented from casting a vote on Article 5.**

We respectfully request that you take action to correct this mistake and place Article 5 on the November election ballot to be decided by a secret ballot vote. This is necessary to enable us to exercise our rights as residents, taxpayers and voters in the Town of Thomaston.

Sincerely,

Anne E. Perkins

ANNIE E. PERKINS
101 Main Street
Thomaston, ME

Marla McGeady
Michael McGeady
Henry McGeady
Betty Kijewski
Ken Kijewski
Sandra Hoeskra
Melanie Hyatt
Elizabeth Selfridge
Michael Reeves
Darcey Comeau
John Ashby
Christina Muse
Adrienne B
Aidan B.
Alan Lavalle
Patricia Lavalle
Alan Payson
Alexander Silverton
Emma Silverton
Alysia Nilsen
Patricia Nilsen
Alyssa Incremona
Will Incremona
Freyja Grey
Anne Perkins
Brian Perkins
Barbara A. Siemion
Brian Foran
Bryan Hocking
Charlie Frattini
Chris Harjula
Missy Harjula
Cliff Colson
Dara Hurt
Delores H.
Ellen Leidenthal
Essie Ross
Frederick Carr
Holly Ames-Allan
Janet Crosman
Jimmy Moreland
Joan Harjula
Jon Grout
Julie F.
Lorrie Staples
Luisa Foran
Madeline C.
Megan Dantello
Nancy Griffin
Noreen Libby
Pamela Polk
Richard Ahearn
Richard Stearns
Mona Stearns
Ryan K.
Stephanie Fogarty
Susan VanCampen
Tristin Maniscalco

Theodore Hallett
Aaron Adams
Carol Tyler
Herb Perkins
Janet Clark
Michael Moseley
Laura Straub
Tracy Bartlett
Jacob Bartlett
Brian Bartlett
Alex Bartlett had he been able to attend would have registered on June 14th
James Elmore
Kristin Elmore has she been able to attend would have registered on June 14th
Heidi Timmerman
Mary Phifer
Scott Yakavenko

The people listed below signed in to vote however each one left before voting on Article 5. Each person wants to be included in this letter as they did not vote due to the SB's insistence of Town Meeting format which was the cause of fear and claustrophobia and feeling sick or a personal demand to leave. Had they had 8am - 8pm and Absentee ballots they would have been able to participate as a taxpaying citizen to vote:

- * Dan Saucier
- *Kray Graymount
- *Jay G
- *Tim VanCampen
- *Ursula Kruse-Vaucienne
- *Jenny Swing

The two names below are the 2 people who were not allowed to vote on Article 5. They arrived as Article 5 vote had just begun. They were wrongly told they could not vote on Article 5. Then they stood on the side and waited and waited and no one came to sign them in at all, depriving them of voting not only on Article 5 but also all the other Articles, obviously including Articles 32 and 33 which impacted the Thomaston Green. Laurie Ryan and Heather Keizer both live Beechwood St and both planned to register to vote, and then vote on June 14