

Email communications between Skip Lisle, Grafton Selectman, and Sarah Jarvis, VLCT Attorney, between April 6 and April 14, 2016 regarding the “Finance Committee” and the proposed industrial wind development
by Skip Lisle, April 26, 2016

(The email chain doesn't print-off in chronological order, and is therefore hard to read, so I made it into this Word document. I have also waited until now (April 26) to release the full transcript because I wanted to make sure there weren't any attorney-client privilege issues involved in doing so. Sarah, who returned to work from vacation today, called this morning and told me that “relationship” was meant to protect individual Selectman, or the Board. In other words, it is up to us if we want to share, outside the Board, our communications with VLCT; they don't have a problem with it.)

Skip:

Last year, Grafton's Town Clerk and Treasurer (same person) formed, without a vote of approval from the Select Board, a “Finance Committee” to do research and possibly begin negotiations with Iberdrola, the company that would build the proposed wind development beginning in 2019. I called you at the time (December?) because I wanted to make sure this was done properly. You told me that a Town Clerk did not have the authority to establish a committee like that, but a private citizen did. The issue has come back around again, so could you please clarify this in writing?

Sarah:

First, I have to reiterate our advice that the selectboard should hire an attorney to do ALL of the communicating/ negotiating with Iberdrola.

Second, the only legal representative of the town is the selectboard or a person that they specifically designate as their representative or agent. If there is a contract or legal agreement to which the town will be a party, then only the selectboard (or their official designee) may represent the town in regard to those matters or that negotiation.

The selectboard has authority to create a committee to advise them on any matter over which the board has authority. Other town boards and commissions can create committees as well—but only as to matters over which they have purview. For instance, a Conservation Commission may form a committee to investigate conservation issues or a Planning Commission may create a committee to draft language for a section of the town plan. I see nothing wrong with an individually-elected officer who is part of a public body (such as a Clerk or a Treasurer) creating a committee—BUT that officer may only do so in regard to matters that are within the purview of their elected office. For instance, a Treasurer might form a committee to come up with recommendations for the storage and copying of town records.

Of course, anyone may gather a group to discuss or gather information on any topic. So the selectboard can't intervene to stop others from meeting and having discussions. But if there is some concern that someone is representing that they have authority to speak on behalf of the town then the selectboard should make it clear that this person is not an official spokesperson for the town and/or this is not an official town committee. If there is a specific person or entity that may be misled, then the selectboard should reach out to that person or entity to let them know that the selectboard has not authorized any person or any committee to speak on the selectboard's behalf.

Skip:

Is it safe to assume that a Treasurer, just because he handles money, does not have the authority to establish any form of committee simply because the subject of money is involved?

Your first paragraph raises another issue the Grafton Select Board is presently discussing. Apparently, this unofficial Committee has already either met with, or talked to, an Iberdrola representative. Subsequently, we learned that Iberdrola has offered to pay for the lawyer/negotiator who would represent US while negotiating with THEM. Committee representatives seem to think this is a good idea, and want to take the money and hire a negotiator immediately. Keep in mind that we have an election this year in Grafton on the issue of whether we want the wind development. Could large "gifts" to Grafton from the developer just prior to the election corrupt or influence the vote? Is that a good idea, or legal? Do you think having Iberdrola pay the person they are negotiating with is logical for Grafton? If not, when you recommend that we retain a lawyer, is it safe to assume you mean one that Grafton, not Iberdrola, pays for exclusively?

Sarah:

Yes, your assumption is correct. The Treasurer only has authority over the handling of money on behalf of the town and the accounting for that money. If the Treasurer had authority over everything that involved money that would mean that the Treasurer would have authority over all matters affecting revenue, budgeting, and expenses, and that is certainly not the case because all of those issues are all within the exclusive purview of the selectboard.

I can't begin to to give you advice about the political ramifications of your decisions. If you are concerned about getting impartial advice then I would suggest that the town pay for its own legal representation. The stakes are high and there is no reason to skimp on something that will have large impacts on the town (financial, political, environmental, etc.) You are not nearly the first town to grapple with the issue of whether to accept payment from an energy facility developer. As such, you should not try and re-invent the wheel on your own, but rather work with an attorney who has experience with these situations and can advise you on options, strategies, etc.

Skip:

On Monday, April 18th our Select Board will probably vote to make the “Finance Committee,” which I described to you in a recent email, an official sub-committee of the Select Board. Can we endorse the entire committee, which was handpicked by the Town Treasurer in a non-open process? Or do we have to “start fresh,” use an open process, and invite any interested applicants for the committee to submit their names for consideration?

Two Select Board members are on the unofficial committee now. (By the way, the committee has already met with Iberdrola to get advice on how to negotiate with, well, Iberdrola.) Does their membership on the present committee affect their ability to vote on the formation of the new committee? Would it be advisable to have zero, one, or in this case, two Select Board members on the new, official subcommittee?

Sarah:

As I have said in every communication about this subject, our advice is that your selectboard should hire an attorney to do ALL communicating/negotiating with Iberdrola. Of course, your selectboard is free to disregard our advice, and make the decisions you think are best. But I will not make recommendations about how you should handle a course of action (appointing a committee to negotiate) that I have urged you not to take.

In general, selectboards have a great amount of discretion in regard to forming an advisory committee and appointing members to that committee. There is no law that imposes requirements for process or membership. When a town has a conflict of interest policy that policy should be adhered to.