

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, SS.

SUPERIOR COURT DEPARTMENT
DOCKET NO. 2176CV0049

ROBERT JONES, ANDREA WADSWORTH,
JAMES CASTEGNARO,
and CLARE LAHEY
PLAINTIFFS
vs.
TOWN OF LEE, SELECTBOARD MEMBERS
PATRICIA CARLINO, DAVID CONSOLATI
and THOMAS WICKHAM
DEFENDANTS

AMENDED COMPLAINT

A. INTRODUCTION

Introduction: The plaintiffs, Robert Jones, Jim Castegnaro, Andrea Wadsworth, and Clare Lahey (hereinafter “Plaintiffs”) hereby bring this Complaint against the Town of Lee, and the Town of Lee Selectboard members Patricia Carlino, David Consolati and Thomas Wigham for: 1) violations of the Open Meeting Law pursuant to M.G.L.c. 30A § 21 et seq.; 2) violation of the Town of Lee Bylaws; and 3) for their abuse of their discretion in their capacity as public servants, for signing a Settlement Agreement which allows General Electric to create a PCB¹ dump in the Town of Lee without obtaining approval by the Town Member of Lee² which includes Plaintiffs.

B. PARTIES

1) Plaintiff, Robert Jones, at all relevant times, is a Lee Town Representative and registered voter for the Town of Lee and resides at 150 Greylock Street, Lee, MA 01238.

¹ Polychlorinated biphenyls (“PCB”) are a group of toxic and carcinogenic manmade chemicals that are oily liquids or solids which were used by General Electric while the company was in Pittsfield, MA. General Electric is responsible for dumping huge quantities of PCBs into the Housatonic River.

² For the purposes of this Complaint, the Town Members shall refer to the registered voters of the Town of Lee.

2) Plaintiff, Andrea Wadsworth, at all relevant times, is a Lee Town Representative and a registered voter in or the Town of Lee and resides at 625 Marble Street, Lee, MA 01238.

3) Plaintiff, James Castegnaro, at all relevant times, is a Lee Town Representative and a registered voter in the Town of Lee and resides at 111 Woodland Road, Lee, MA 01238.

4) Plaintiff Clare Lahey, at all relevant times, is a registered voter in the Town of Lee and resides at 110 Mill Street, Lee, MA 01238.

5) Defendant, Selectboard members are a public body pursuant to M.G.L.c. 30 A § 21 et. seq. which represents the Town of Lee.

6) Defendant, Patricia Carlino, at all relevant times, is a Selectboard member for the Town of Lee, MA.

7) Defendant, David Consolati, at all relevant times, is a Selectboard member for the Town of Lee, MA.

8) Defendant, Thomas Wickham, at all relevant times, was a Selectboard member for the Town of Lee, MA.

C) FACTUAL ALLEGATIONS

9) In 2013, the Rest of River Committee was created. It comprised of 6 entities: City of Pittsfield, Town of Stockbridge, Town of Lee, Town of Lenox and Town of Great Barrington and Town of Sheffield. The stated purpose for this committee was to allow the municipalities along the Housatonic River that would be impacted by the clean-up of the PCBs by General Electric to have a voice.

10) In 2013, when the Rest of River Committee was created, the EPA had determined that PCB dumps would not be permitted and that 100% of the PCBs that were dredged from the Housatonic River as part of the clean up would be taken out of the Commonwealth and stored at a designated facility.

11) The first public notice of the Town of Lee's proposed involvement with the Rest of River Committee was in the Town Warrant for the May 9, 2013 Town Meeting in Article 39 which states the following: "To see if the Town will vote to raise and appropriate or transfer to from available funds the sum of \$10,000, or any other amount, for the Town of Lee's share of the cost to retain, together with the other communities along the Housatonic River from Pittsfield to Sheffield, an agent to obtain financial assistance from the General Electric Company to mitigate the effects of its anticipated cleanup of the river, or to take any other action relative thereto."

12) On May 9, 2013, the Town Meeting approved an expenditure of \$10,000 per Article 39 as referenced in paragraph 12 above.

13) For the years 2014 through 2019, each of the Town Warrants for the Lee Annual Town Meetings had an article with similar or identical language to Article 39 referenced in Paragraph 11 seeking approval for funds in the amount of \$10,000 “for the Town of Lee’s share of the cost to retain, together with the other communities along the Housatonic River from Pittsfield to Sheffield, an agent to obtain financial assistance from the General Electric Company to mitigate the effects of its anticipated cleanup of the river, or to take any other action relative thereto.” Yet, no additional information regarding how the anticipated cleanup of the Housatonic River would impact the Town of Lee was provided at any of the Town Meetings or the bi-weekly Selectboard meetings.

14) In 2016, pursuant to an appeal by General Electric, the EPA reversed its position regarding the ban of all PCB Dumps as part of the cleanup of the Housatonic River.³

15) Since 2016, when the EPA reversed its position on banning PBC Dumps as part of the cleanup of the Housatonic River, the Defendant Selectboard members met in a closed meeting as part of the Rest of River Committee numerous times.

16) The Defendant Selectboard members purposely kept all information gathered by the Rest of River Committee secret from the Plaintiffs and Town Members in violation of their duty as agents for the Town of Lee.

17) M.G.L.c. 30A § 21 (a) allows a public body to go into executive session for very specific reasons. M.G.L.c. 30A § 21 (a) 3 “allows a public to go into executive session “to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.”

18) On February 4, 2020, the agenda for the regular Selectboard bi-weekly meeting (purportedly) states that: “The Members will convene in EXECUTIVE SESSION at 6:30pm. for the purpose of discussing strategy with respect to ongoing litigation and mediation relative to the Environmental Appeals Board proceedings between G.E. EPA (Housatonic Rest of River), because an open meeting discussion would have a detrimental effect on the town’s litigation strategy. The Members are expected to reconvene in open session in the former courtroom at 7:00pm.”

19) The minutes for the February 4, 2020, do not reflect that the Defendant Selectboard declared that they were going into Executive Session or make any reference to the Defendant Selectboard “discussing strategy with respect to ongoing litigation and mediation relative to the Environmental Appeals Board proceedings between G.E. EPA (Housatonic Rest of River), because an open meeting discussion would have a detrimental effect on the town’s litigation strategy”.

20) On February 5, 2020, Defendant Thomas Wickham, the Chairman of the Selectboard for the Town of Lee signed a 48-page Settlement Agreement (hereinafter the

³ The Town of Lee was not a named party in the litigation before the EPA regarding the allowance of permit for PCB Dump as part of the cleanup of the Housatonic River.

“SA”) in secret along with various private and public entities. The SA authorized, in relevant part, that General Electric shall be allowed to create a PCB Dump in the Town of Lee in exchange for a payment from G.E. in the amount of \$25 Million dollars. (See Settlement Agreement attached hereto as Exhibit A.)

21) The Selectboard members did not have a legitimate reason to go into Executive Session on February 4, 2020 in keeping with the provisions of the Open Meeting Law.

22) The Selectboard members were no longer “discussing strategy with respect to ongoing litigation and mediation relative to the Environmental Appeals Board proceedings between G.E., EPA and the Housatonic Rest of River” as of February 4, 2020.

23) The Defendant Selectboard members violated M.G.L.c. 30A § 21, et seq. when they failed to obtain consent from the Town Meeting prior to signing the SA.

24) Section 43-2 of Town of Lee Bylaws states that: “*The Selectmen may, at their discretion, compromise or settle any claim or suit to which the Town is a party which does not require payment by the Town of an amount of in excess of \$1,000. No settlement of a claim or suit obligating the Town in an amount in excess of \$1,000 shall be made, except as authorized by law, without consent of the Town Meeting.*”

25) The intent of Section 43-2 is to make it possible for the Selectboard Members to resolve minor/nuisance claims of minimal consequence quickly and efficiently without obtaining consent to do so by Town Meeting.

26) Section 43-2 of Town of Lee Bylaws is reasonably interpreted to exclude allowing the Selectboard members to enter into a settlement agreement with General Electric and EPA without consent by Town Meeting.

27) Section 43-2 of Town of Lee Bylaws gives the Selectboard members the *discretion* to resolve nominal claims valued under \$1,000 without obtaining consent of Town Meeting.

28) Section 43-2 of Town of Lee Bylaws is not a mandate that all claims of a value less than \$1,000 be resolved by the Selectboard members without the consent of Town Meeting.

29) By signing the SA without consent by Town Meeting, the Selectboard members abused their discretion.

30) The Defendant Selectboard members had a duty to obtain consent from Town Meeting prior to signing the SA based on a reasonable interpretation of the applicable Lee Town Bylaws.

31) The Selectboard members are subject to M.G.L.c. 40 § 4 which states in relevant part, the following: *A town may make contracts for the exercise of its corporate powers, on such terms and conditions as authorized by the town meeting in a town. A town may not contract for any purpose, on any terms, or under any conditions inconsistent with any applicable provision of any general or special law.*

32) The SA is a contract for the purposes of M.G.L.c. 40 § 4.

33) The Defendant Selectboard members failure to obtain consent from Town Meeting prior to signing the SA was in violation of M.G.L.c. 40 § 4.

COUNT I

Plaintiffs Jones, Castegnaro, Wadsworth, Lahey vs. Town of Lee Selectboard Members

Consolati, Carlino and Wickham et al.

(Violation of Open Meeting Law per M.G.L.c. 30A § 21 et. seq.)

34) Plaintiffs hereby incorporate paragraphs 1-33 herein by reference.

35) As a result of the above, the Defendant Selectboard violated the Open Meeting Law as set forth in M.G.L.c. 30A § 21A et. seq.

COUNT II

Plaintiffs Jones, Castegnaro, Wadsworth and Lahey

vs. Town of Lee Selectboard Members, et.al.

(Violation of the Lee Town Bylaws)

36) Plaintiffs hereby incorporate paragraphs 1-35 herein by reference.

37) As a result of the above, the Defendant Selectboard members breached their duty as set forth in the Lee Town By-Laws when they agreed to sign the SA without first obtaining approval from the Plaintiffs and Town Members.

COUNT III

Plaintiffs Jones, Castegnaro, Wadsworth and Lahey

vs. Town of Lee Selectboard, Consolati, Carlino and Wickham

(Breach of Duty/Abuse of Discretion)

38) Plaintiffs hereby incorporate paragraphs 1-37 herein by reference.

39) As a result of the above, the Defendant Selectboard members abused their discretion as agents for the Town of Lee when they agreed to sign the SA without first obtaining approval from the Plaintiffs and Town Members.

COUNT IV

Plaintiffs Jones, Castegnaro, Wadsworth and Lahey

vs. Town of Lee Selectboard, Consolati, Carlino and Wickham

(Violation of Open Meeting Law per M.G.L.c. 40 § 4)

40) Plaintiffs hereby incorporate paragraphs 1-39 herein by reference.

41) As a result of the above, the Defendant Selectboard violated the Open Meeting Law as set forth in M.G.L.c. 40 § 4 et. seq.

COUNT V

Plaintiff Lahey vs. Town of Lee Selectboard, et al
(Appeal from A.G. Determination per M.G.L.c. 30A § 23 d)

42) Plaintiff hereby incorporate paragraphs 1-41 herein by reference.

43) On February 10, 2020, Plaintiff Clare Lahey filed a citizen's complaint with against the Town of Lee for a violation of the Open Meeting Law as set forth in M.G.L.c 30A § 21A et seq with the Massachusetts Attorney General's Office ("A.G.") pursuant to the A.G.'s open meeting law process.

44) On March 23, 2020, the Town of Lee filed their response to the citizen's complaint.

45) Plaintiff, Clare Lahey filed an appeal of the Town of Lee's response with the A.G. in a timely manner

46) On March 2, 2021, the A.G. responded to Plaintiff Lahey's appeal with a determination in favor of the Defendant Selectboard. (See A.G.'s Determination attached hereto as Exhibit B.)

47) Plaintiff Lahey seeks this Court's review of the aforementioned determination made by the A.G. pursuant to M.G.L.c. 30A § 23 (d).

D. PRAYERS FOR RELIEF

WHEREFORE: Plaintiffs hereby request that this Court find in favor of the Plaintiffs and declare that:

- A. The Defendant Selectboard and the Town of Lee was not authorized to sign the Settlement Agreement dated February 5, 2020; AND, therefore,
- B. The signature of Defendant Thomas Wickham on the Settlement Agreement shall be deemed null and void, AND therefore,
- C. The Settlement Agreement shall be deemed null and void entirely or in the alternative, as to any obligation or terms set forth in the Settlement Agreement that pertain to the Town of Lee, including, but not limited to, the placement of a PCB Dump in the Town of Lee.

The Plaintiffs hereby requests any additional remedy or relief that this Court deems appropriate.

The Plaintiffs hereby make their demand for a Jury Trial.

Respectfully submitted,
For the Plaintiffs
By their attorney,
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March 24, 2021