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Freedom Planning Board

71 Pleasant St.  
Freedom, Maine 04941

October 1, 2023

Freedom Select Board via email:

[selectmen@freedomme.org](mailto:selectmen@freedomme.org)

Dear Select Board,

On September 30, 2023, the Town of Freedom voted 24-6-1 to pass a proposed moratorium for high impact electric transmission lines. In that meeting, I expressed concern over a variety of legal issues in which a few Board members joined. The Planning Board next regularly meets on October 10, 2023, at 7 pm. At that meeting we will consider our task related to an electric transmission ordinance and scheduling for that process. I sincerely appreciate Laura's helpful suggestion that the Select Board solicit advice from the town attorney regarding the Planning Board's concerns.

It would be most helpful and appreciated if the Select Board can ask the town attorney the following questions, or allow me to contact the town attorney to ask these questions:

The redlining below was incorporated into the text by Bill Kelly on 10-5-23 as a pragmatic way to address the issues in a cost-effective manner. Thanks for asking me to participate:

1. Is the moratorium valid considering Freedom already has a Commercial Development Review Ordinance which protects against "serious public harm" from "commercial development?" Of course it is "valid"; it is an ordinance adopted pursuant to a very specific state statute. Most moratoria address new and unexpected developments and as the statute provides and the Moratorium Ordinance references, the Town needs time to address a use, and large scope of use, which is unique and not previously considered as to use or scope. The fact that an ordinance exists that has some oversight overlap (or may have overlap) was essentially addressed by the vote to approve the Moratorium – thus the voters deemed the existing ordinance was not sufficient to address the new proposed development.
2. If the moratorium is deemed invalid because of Freedom's Commercial Development Review Ordinance, but nevertheless passed at the special town meeting, is the moratorium legally enacted? Not applicable.

1. Can the Town of Freedom “evaluate concerns” related to high impact transmission lines without violating the “testing the suitability” provision of this moratorium? **The Town has an enormous scope of authority to enact police power and land use ordinances (typically ordinances merely need to be “rational” to pass constitutional muster); this type of question is one of many that will be sorted out during the public hearing process. Stated another way, it is way too early in the public process to address such a focused issue – one of dozens that may crop up in the context of a wholistic review of what the Town feels important to protect the health and welfare of the citizens.**
2. Can the Planning Board draft an ordinance without violating the moratorium’s prohibition on “testing the suitability” of high impact transmission lines? **The Planning Board should conduct hearings, take broad public opinion, maybe seek expert opinion, and then make a recommendation to the Select Board. Any draft by the Planning Board is just that, a draft, and by definition of such a preliminary piece of drafting, cannot violate a moratorium. The Planning Board is not seeking a permit.**
3. If drafting an ordinance violates the moratorium’s prohibition on “testing the suitability” of electric transmission lines, could individual Planning Board members be civilly liable for violating the moratorium under 30-A M.R.S.A. 4452(3)? **There is no such violation as described above. Planning Board members will not be held liable for performing their duty, which includes vigorous debate, giving contrary opinion, or even unpleasant exchanges. It is not legally possible to damage anyone in performing public hearings, unless someone violates some statute or law. Boards debate addressing moratoria ordinances every day.**

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4. Does the town attorney have a recommendation for either (1) drafting a brand new ordinance solely related to high impact transmission lines; or (2) amending or revising our existing Commercial Development Review Ordinance to address high-impact transmission lines? **No. It can be stand alone, or a subsection of an existing ordinance with its own definitions, applicability, standards, application criteria, hearing process, conditional permit issuance and enforceability.**
5. Does the town attorney have any suggestions for revising the moratorium? **No. I avoid infusing my opinions, which have no value, and defer to the collective wisdom of the residents (unless they go off the rails and try to do something illegal).**

General observation: don’t get ahead of the residents or the process. As the

goals to be addressed, look at similar ordinances that have been passed in Maine or New England for context and guidance, get an expert to help guide the process of inquiry and public discussion if you think that will be helpful, and also the same expert could address the industry standards and safety concerns that may apply (such as the many fires we all keep hearing about from these lines across the county). A slow and steady series of meetings and hearings wins the race. Legislation need not be quickly adopted; the process should be afforded the time to be fully baked, and then a recommendation is produced. Thanks. Bill

Thank you for your consideration of these questions. I hope it is not lost on anyone that we are all working toward a common goal – to craft a protective ordinance as confidently and with as much due diligence as possible.

Sincerely,



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