

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT
CIVIL ACTION
NO. _____

RURAL JUSTICE NETWORK, INC.,
Plaintiff,

v.

TOWN OF NORTH BROOKFIELD, JASON
PETRAITIS, in his official capacity as
member and Chair of the North Brookfield
Board of Selectmen and in his individual
capacity, JOHN TRIPP, in his official
capacity as member and Vice Chair of the
North Brookfield Board of Selectmen and in
his individual capacity,
Defendants.

**VERIFIED COMPLAINT FOR
DECLARATORY, INJUNCTIVE AND
OTHER RELIEF**

INTRODUCTION

1. This is an action for declaratory, injunctive, and related relief with regard to the refusal of the Town of North Brookfield, by and through the Chair and Vice Chair of the Board of Selectmen (sic), to authorize Plaintiff Rural Justice Network (“RJN”) to reserve a portion of the North Brookfield Town Common and receive related services for a 2024 Small Town Pride celebration in June 2024. The Defendants’ refusal to authorize this event is based on the fact that RJN intends to include “drag” performers in the programming—and is unwilling to hide such performance in a tent. The Defendants’ actions violate RJN’s rights to free expression, association, and assembly and unlawfully discriminate on the basis of gender.

2. The Defendants’ obstruction is a continuation of a pattern of discriminatory treatment by Defendants with regard to Small Town Pride events. The Chair and Vice Chair of the Board of Selectmen, Jason Petraitis and John Tripp respectively (together “Individual

Defendants”) also attempted to use their official power to deny RJN the right to include any drag performance in the 2023 Small Town Pride celebration. Only after legal counsel for RJN and counsel for the Town became involved was that denial rescinded and the event finally allowed to go forward as planned in June 2023.

3. The Defendants’ actions, which are based on the Individual Defendants’ personal views that any public “drag show” is “wrong,” violate the rights of RJN and its members and allies to free speech, association, and assembly protected by Articles 16 and 19 of the Massachusetts Declaration of Rights and the First Amendment to the United States Constitution. They also constitute discrimination on the basis of gender in violation of Article 1 of the Massachusetts Declaration of Rights and G.L. c. 93, § 102.

4. RJN seeks appropriate relief, including injunctive relief and a declaration that Rural Justice Network’s request to use the Town Common in June 2024 must be treated as approved, subject only to content- and viewpoint-neutral and otherwise lawful time, place or manner standards generally applicable to all similarly-situated applicants and without regard to the gender, sexual orientation or gender identity or expression of performers or attendees. RJN also seeks declaratory and injunctive relief as to the unconstitutionality of various free expression-related policies of the Town and awards of damages.

THE PARTIES

5. The Rural Justice Network (“RJN”) is a Massachusetts non-profit organization engaged in community education and support for members of the LGBTQ+ community in small town and rural Massachusetts. It is headquartered in North Brookfield. Its members and partners include individuals who on occasion express themselves through dressing in clothing typically associated with a gender other than the one assigned them at birth and singing and dancing to

recorded music. RJN includes such performance in its events to send a political message that all members of the LGBTQIA+ community have the right publicly to express and celebrate their identities. RJN was the sponsor of Small Town Pride in June 2023 and is the sponsor of the planned June 2024 event.

6. The Town of North Brookfield (“Town”) is a town in Worcester County, Massachusetts. The Board of Selectmen of North Brookfield (“the Board”) operates as the Chief Executive body of the Town. Its members are Jason Petraitis, who serves as Chair, John Tripp, who serves as Vice Chair, and Elizabeth Brooke Canada who serves as Clerk.

7. Jason Petraitis (“Petraitis”) is the Chair of the Board, a resident of North Brookfield and is sued in his individual and official capacities.

8. John Tripp (“Tripp”) is the Vice Chair of the Board, a resident of North Brookfield and is sued in his individual and official capacities.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action, including pursuant to G.L. c. 214, § 1, G.L. c. 231, G.L. c. 93, § 102 and 42 U.S.C. § 1983.

10. Venue is proper, including pursuant to G.L. c. 214, § 5, G.L. c. 223, § 1, and G.L. c. 93, § 102.

FACTUAL BACKGROUND

11. On or about October 24, 2023, RJN submitted a Request for Resources to the Town related to the 2024 Small Town Pride event to be held in June 2024 on the North Brookfield Town Common. See **Exhibit A**. The Request for Resources was accompanied by a narrative description of the proposed event. See **Exhibit B**. RJN seeks authorization for the event, including access to electric power, permission for food trucks and related parking services, and public safety services.

Submission of such a Request is the established means by which an event sponsor obtains Town permission for holding an event on the Town Common.¹ When an event is approved through this process, the event sponsor is allowed to set up a designated area of the Common and receive public services in conjunction with the event, and competing events are not authorized for the same time and location.

12. On November 7, 2023, the Board held a regularly scheduled meeting to discuss Town business. Reflected on the meeting agenda as “new business” was the initial approval of RJN’s request for resources for the Small Town Pride 2024 event.²

13. During the November 7 meeting,³ Petraitis began the discussion of the RJN request by asking a representative of the organization present at the meeting, “And your plan is to have the drag performers again?” November 7 Video starting at approximately 26:08. After receiving an affirmative response from the RJN representative, Petraitis asked, “You plan on having any kind of tent for them to perform in, or you still going to be out in the open again like last time?” *Id.* at approximately 26:14.

14. RJN’s past Small Town Pride events have included performance intended to be appropriate for all ages in which individuals dress in clothing normally associated with a gender

¹ The process is now included in the Parks and Recreation policy adopted by the Town effective July 1, 2023. Parks and Recreation Committee Policy (July 25, 2023), https://www.northbrookfield.net/sites/g/files/vyhli3576/f/uploads/parks_and_recreation_department_policy_1.1.2_0.pdf (last accessed on December 8, 2023).

² The meeting agenda is available online at <https://www.northbrookfield.net/board-selectmen/agenda/agenda-november-7-2023> (last accessed on December 8, 2023).

³ A recording of the meeting is available at North Brookfield Local Public Access Cable, North Brookfield Board of Selectmen Meeting November 7th, 2023, YOUTUBE (November 8, 2023), <https://www.youtube.com/watch?v=Xu0Xx3xUQH4> (last accessed December 8, 2023) (“November 7 Video”).

different than the gender assigned them at birth and lip-sync and dance to recorded popular songs.⁴

15. After the RJN representative confirmed that some drag performance would again be included and would not be hidden from view behind a tent, Petraitis stated, “Well, you can get the approvals from the other people, but the same thing is going to happen this year that happened last year. I’m not voting for it. Okay. I’m just not. If you’re not going to have that stuff hidden from kids, I’m not voting for it.” November 7 Video starting at approximately 26:28.

16. Board member Elizabeth Brooke Canada pointed out that Petraitis’ statements did not reflect the actual criteria listed in the Parks and Recreation Committee policy that governs the approval of permits for the use of the Common. Petraitis replied, “I really could care less.” November 7 Video starting at approximately 27:05.

17. Canada made a motion to approve the Request for Resources, which both Petraitis and Tripp refused to second. November 7 Video starting at approximately 27:13, 27:35. Petraitis explained that the decision not to second the motion meant that the application “doesn’t go forward.” November 7 Video starting at approximately 27:58.

18. In response to a question from a member of the public regarding whether the Board had authority to require “screening or a tent” for certain events, Canada stated that she did not think so based “on the legal feedback we received.” November 7 Video starting at approximately 28:58 and continuing through approximately 29:30. Tripp then stated, “So once again, the ACLU will probably come into play on that, like it did last year.” November 7 Video starting at approximately 29:32.

⁴ Video of the performance from 2023 is available at <https://drive.google.com/file/d/1RVBTpDFdyq9lcSJz8I4lsAUtdTOdrY3w/view?usp=sharing>.

19. Tripp's statement references the events related to RJN's application for approval for Small Town Pride 2023, including his own and Petraitis's efforts to withdraw approval for the event because of its inclusion of a drag performance. After Petraitis and Tripp, acting in their official capacities on behalf of the Town, attempted to censor inclusion of a drag performance, the American Civil Liberties Union of Massachusetts, Inc. ("ACLU"), on behalf of RJN, communicated with the Town about the illegality of the actions. See **Exhibit C**.

20. For the 2023 event, RJN had submitted a Request for Resources to the Town in or about January 2023. See **Exhibit D**. On March 28, 2023, RJN representatives appeared before the Board to discuss the event and obtain final approvals. The Board voted 2-1 to approve the Request for Resources, subject to RJN providing proof that it was obtaining insurance to cover the event and arranging to pay for a police detail. At all times relevant to the 2023 event, RJN made clear that it intended to include a drag performance.

21. During a Board meeting on April 11, 2023,⁵ Petraitis moved for reconsideration of the approval for the 2023 event.⁶ Petraitis began the discussion of RJN's request by stating, "[T]wo weeks ago we voted to approve the use of the Town Common for a Pride event, and that Pride event included a drag show." He continued, "At the time, there was not enough information to deny the drag part of the show, but after doing extensive research, we've got some information that would prohibit the drag portion of that show." April 11, 2023 Video starting at approximately 6:21.

⁵ A recording of the meeting is available at North Brookfield Local Public Access Cable, North Brookfield Board of Selectmen Meeting April 11th, 2023, YOUTUBE (April 11, 2023), <https://www.youtube.com/watch?v=kggrvDTSdZo> (last accessed November 27, 2023) ("April 11, 2023 Video").

⁶ The topic was not on the agenda for the meeting in apparent violation of the Open Meeting Law, G.L. c. 30A, § 20(b) (requiring notice in advance of a meeting including "a listing of the topics that the chair reasonably anticipates will be discussed at the meeting").

22. Petraitis then asked for a motion to rescind the vote to approve the 2023 Small Town Pride event and to approve the event “without the drag show.” Tripp made the motion, and Canada seconded. April 11, 2023 Video starting at approximately 7:00.

23. After the motion was made, Petraitis read from a prepared statement that included:

This Board is not trying to regulate anyone’s existence or freedom of expression. Our aim is to ensure that any event approved for the general public will not, even inadvertently, harm anyone who might possibly attend the event. While there may be drag performances that are not centered on illicit behavior or intended to be sexual, the majority of these shows do include sexual innuendo and behavior that exaggerates all aspects of the individual’s sexuality. To wit, drag shows should be deemed adult entertainment.

April 11, 2023 Video starting at approximately 7:25.

24. During discussion after the prepared reading, Tripp stated, “I just don’t understand how it can be family friendly, because I believe it is adult entertainment. And if you want to see me in a Speedo go down to the playground, that’s adult entertainment.” After Canada commented that she had never witnessed individuals dressed in Speedos at these events, Tripp responded, “Whatever they’re doing is wrong in my mind.” April 11, 2023 Video starting at approximately 9:42.

25. Canada pointed out that the Board could not regulate events because someone may be offended by an individual’s free expression. She continued, “What’s the definition of adult entertainment? I haven’t seen anything at a Pride event that falls under adult entertainment or anything that’s sexual in nature.” April 11, 2023 Video starting at approximately 10:05.

26. The Board voted 2-1, with Canada voting against, to rescind the prior approval and to approve the request conditioned on it not including any “drag show” and “without the drag queen part.” April 11, 2023 Video starting at approximately 12:03 and again at 22:49.

27. After receiving the letter from ACLUM that is attached as **Exhibit C**, on April 25,

2023, the Board met again and addressed this issue.⁷ Petraitis began by announcing that Town Counsel agreed with ACLUM that the Board’s prior action was unlawful, and he read aloud portions of a letter from Town Counsel. April 25, 2023 Video starting at approximately 2:40. The Board then unanimously passed a motion to revoke the April 11 decision. *Id.* starting at approximately 4:20.

28. A vote was then called to reinstate the permission granted on March 28 without any limitation on any “drag show.” During discussion, Tripp said he found the intended expression “wrong.” Petraitis and Tripp “abstained,” and Canada voted in favor. April 25, 2023 Video starting at approximately 4:45.

29. Petraitis announced that the resulting 1-0 vote in favor of reinstating the March 28 approval meant that the event was not approved, although RJN was free to show up in some fashion on June 24. April 25 Video starting at approximately 6:11.

30. In comments to the press on April 26, 2023, the Chair said he could not say what the impact of the April 25 vote was on RJN’s requests for services and that that RJN “will have to contact him to confirm it is planning to move forward with the event and about what it needs to go forward, and those details will be hammered out then.”⁸

31. In light of these events and statements, counsel for RJN again communicated with Town Counsel, expressing that the April 25 action of the Board, like the April 11 action before it, discriminated on the basis of the content of RJN’s speech and the gender of its members and left

⁷ A recording of the meeting is available at North Brookfield Local Public Access Cable, North Brookfield Board of Selectmen Meeting April 25th, 2023, YOUTUBE (April 25, 2023), <https://www.youtube.com/watch?v=GLQ0MEICl8g> (“April 25, 2023 Video”).

⁸ Jeff A. Chamer, *North Brookfield board says it will allow drag show to go forward, without a permit*, TELEGRAM & GAZETTE (April 26, 2023), <https://www.telegram.com/story/news/local/2023/04/26/north-brookfield-drag-show-can-go-forward-without-permit-board-says/70155355007/>.

RJN without official approval for the right to exclusive use of the space on the Town Common during the event.

32. By letter dated April 28, 2023, attached as **Exhibit E**, Town Counsel asserted that that the result of the vote on April 25 was to leave in place the original March 28 approval of the event including drag performance. Based on that communication, the Town then arranged for Board member Canada to sign the Request for Resources, indicating it was approved. **Exhibit F**.

33. Small Town Pride 2023 went forward successfully on June 24, 2023, including a drag performance. However, due to the delays caused by the Individual Defendants' actions, fewer vendors and performers were available than would otherwise have been the case. To prevent similar losses this year, RJN chose to submit its Request for Resources to the Board in October 2023—just in case the Board again presented obstacles to the approval for Small Town Pride.

34. The actions of the Board majority on November 7, 2023 show that RJN's concerns and preparations were well-founded. Because an applicant's exclusive use of the Town Common for any particular day is determined "on a first come, first-served basis," Section 3.1.1. of Parks and Recreation Committee Policy, delay in giving RJN requested approvals could have an impact not only on advance planning and participant availability but also on being allowed to use the Common at all on the requested date.

35. The Individual Defendants acted on November 7, 2023 with the intent to violate RJN's rights protected by the First Amendment and the state constitution and with reckless indifference to those rights about which they were on full notice after the events and legal advice they received with regard to Small Town Pride 2023. They acted with intent to exclude from a free expression event on the Town Common individuals whose mannerisms and style of dress do not conform with the norms of the gender they were assigned at birth.

36. The Defendants’ November 7, 2023 action has caused and continues to cause RJN and its members delay in planning Small Town Pride 2024 and may result in additional costs.

37. Because of the actions of the Individual Defendants, members of RJN are being thrust, once again, into the center of a controversy—which they do not seek or desire—that forces them to grapple, once again, with the fact that they are not fully and equally welcome in their communities.

38. RJN files this action seeking judicial relief to prevent the Defendants from continuing to obstruct Small Town Pride 2024 and future events, to preserve its first-come position for an event on a Saturday in June 2024, for declarations as to the legality of various of the Town’s policies that impact free expression, and to vindicate its members’ legal rights to equality.

LEGAL BACKGROUND

39. Both Article 16 of the Massachusetts Declaration of Rights, as amended, and the First Amendment to the United States Constitution provide robust protection for free expression and for associating in connection with such expression, particularly in traditional public forums such as the North Brookfield Town Common. Under Article 16, strict scrutiny applies to restrictions on political speech in any kind of public forum. Article 19 of the Declaration of Rights provides robust protection for members of the public to assemble to consult upon the public good and otherwise express themselves in an “orderly and peaceable” manner.

40. Governments can impose reasonable time, place and manner restrictions on free expression, but to qualify as such they must be content-neutral, contain clear standards to guide enforcement discretion and notice to the public, and be narrowly tailored to serve a substantial and legitimate government interest.

41. Laws and government actions that do not provide clear notice of what is and is not

allowed are unconstitutionally vague, in violation of Article 10 of the Declaration of Rights and the Fourteenth Amendment to the United States Constitution. A particularly strict vagueness analysis applies when free expression rights are impacted.

42. Article 1 of the Declaration of Rights as amended requires equal protection of the laws based on “sex” and such protection forbids discrimination on the basis of gender, gender identity or sexual orientation.

43. The Massachusetts Equal Rights Amendment, G.L. c. 93, § 102, forbids discrimination against individuals on the basis of sex, which encompasses gender, gender identity and sexual orientation.

CAUSES OF ACTION

Count 1 – Free Expression and Association

Article 16 of the Declaration of Rights and First Amendment to the U.S. Constitution

44. The allegations above are fully incorporated herein.

45. The action of Defendants on November 7, 2023, which denies RJN the opportunity for full approval of its Request for Resources for Small Town Pride 2024 because it will include drag performance, is a content-based, viewpoint-based, vague, and unconstitutional infringement on freedom of expression and association under both Article 16 of the Declaration of Rights and the First Amendment to the United States Constitution.

46. The Town’s policy and practice of requiring sponsors of events on the Town Common to provide insurance coverage, including for circumstances or damages caused by participants over whom they have no control, and its application of that policy or practice to RJN in connection with Small Town Pride, is an unconstitutional abridgement of the rights to free speech and assembly protected by the First Amendment, Article 16 and Article 19. The policy is additionally unlawful because, as set forth in Section 3.3 of the Parks and Recreation Committee

Policy, liability insurance will be required “under most circumstances,” but no content-neutral criteria are provided to guide Town discretion as to when insurance is or is not required or as to what must be covered.

47. The Town’s policy or practice of requiring sponsors of events on the Town Common to pay for public safety services, including to prevent disruption by counter-protestors or other attendees over whom the sponsors have no control, and any application of this policy or practice to RJN in connection with Small Town Pride, is an unconstitutional abridgement of the right to free speech under both Article 16 and the First Amendment.

**Count 2 – Right of Assembly
Article 19 of the Declaration of Rights**

48. The allegations above are fully incorporated herein.

49. The Defendants’ failure to provide approval for Small Town Pride 2024, including a public drag performance, is an unconstitutional abridgement of Article 19 of the Declaration of Rights, which confers upon the people a right to assemble with others in an orderly and peaceable manner to consult upon the common good without discrimination based on the content of their expression. Defendants’ conduct on November 7, 2023 also infringes RJN’s right to associate enshrined in Article 19.

50. The Town’s policies or practices of requiring event sponsors to provide insurance and pay for public safety services, including with regard to conduct of those over whom they have no control, are inconsistent with the right of assembly protected by Article 19 of the Declaration of Rights.

**Count 3 – Discrimination on the Basis of Sex/Gender
Article 1 of the Declaration of Rights and G.L. c. 93, § 102**

51. The allegations above are fully incorporated herein.

52. Article 1 of the Declaration of Rights and G.L. c. 93, § 102 prohibit discrimination on the basis of sex, which encompasses discrimination based on gender, gender identity and sexual orientation.

53. The Defendants' conduct on November 7, 2023 with regard to RJN's Request for Resources for Small Town Pride 2024 is sex discrimination because it differentiates between people based on whether they are or are not dressing and performing in a manner perceived as consistent with the gender assigned them at birth. It is intended to withhold government approval and attendant services to those who express themselves through drag and those who associate with them.

Count 4 – Due Process and Vagueness
Article 10 of the Declaration of Rights and Fourteenth Amendment to the U.S. Constitution

54. The allegations above are fully incorporated herein.

55. The Town has no laws or policies to adequately guide the Board's or the Parks and Recreation Committee's exercise of discretion with regard to approval of Requests for Resources. Section 3.1.1 of the Parks and Recreation Committee Policy says only that "initial approval of Selectboard" is required, but it provides no standards by which such approval must be granted or may be withheld. As to the Committee, the policy says "[a]ny approval by the Committee shall be subject to all necessary approvals listed on the form," but it does not require approval if those subsidiary approvals are provided. The policy is therefore void for vagueness.

56. In addition, Section 3.3 of the Parks and Recreation Committee Policy is void for vagueness because it contains no standards to guide discretion as to application of the provision that insurance is required "under most circumstances" or the amount of insurance required.

57. Defendants have (yet again) denied RJN approval for Small Town Pride because of RJN's intent to include publicly visible "drag performance." Yet, the Town has never defined what

qualifies as “drag performance” in its view. This vagueness has a chilling effect on RJN’s speech and assembly rights. Particularly in the context of speech or expressive conduct, this lack of standards and related vagueness violates due process protected by Article 10 of the Declaration of Rights and the Fourteenth Amendment to the U.S. Constitution.

Count 4 – Unlawful Taxation
Amend. Article 2 of the Mass. Constitution and G.L. c. 40, § 22F

58. The allegations above are fully incorporated herein.

59. Forcing RJN and other sponsors of events in the Town Common and other traditional public forums to pay for public safety services, including to control the conduct of persons over whom they have no control and whose interests may in fact be adverse to their own, constitutes a tax without legislative authorization in violation of Article 2 of the Amendments to the Massachusetts Constitution and G.L. c. 40, § 22F.

PRAYERS FOR RELIEF

Plaintiffs therefore request the following relief:

1. Upon filing of a motion for preliminary injunction or temporary restraining order on behalf of RJN, issuance of a short order of notice for a prompt hearing on such motion.
2. After hearing on any filed motion, entry of a preliminary injunction pursuant to G.L. c. 214, § 1 and G.L. c. 93, § 102, enjoining Defendants from failing to treat RJN’s October 24 Request for Resources as approved as of November 7, 2023; from denying RJN the priority position for its preferred June 2024 date pursuant to the “first come, first-served” provision of Section 3.1.1 of the Parks and Recreation Committee Policy; and from denying RJN any services, protections or rights, including exclusive use of the Town Common for Small Town Pride in June 2024, except for reasons that are equally applied to all applicants and are not based on the content or viewpoint of their intended expression, the gender, gender identity or sexual orientation of any

participants or attendees, or the inclusion of any drag performance.

3. Entry of a permanent injunction pursuant to G.L. c. 214, § 1 and G.L. c. 93, § 102, incorporating the terms of the proposed preliminary injunction and enjoining Defendants from discriminating against RJN as to future events based on the content or viewpoint of their intended expression, the gender, gender identity or sexual orientation of any participants, or the inclusion of any drag performance.

4. Entry of declarations pursuant to G.L. c. 231A, including that:

- a. The November 7, 2023 conduct of the Defendants, and any other actions taken to deny RJN the right to hold Small Town Pride on the Town Common in June 2024 based on the content or viewpoint of expression, the gender, gender identity or sexual orientation of performers or participants, or whether or not the event includes drag performance, violate Rural Justice Network's rights to free speech and association under Article 16 and the First Amendment;
- b. The November 7, 2023 conduct of the Defendants, and any other actions taken to deny RJN the right to hold Small Town Pride on the Town Common in June 2024 based on the content or viewpoint of expression, the gender, gender identity or sexual orientation of performers or participants, or whether the event includes drag performance, violate RJN's rights to assembly and association under Article 19;
- c. The November 7, 2023 conduct of the Defendants, and any future actions taken to deny RJN the right to hold Small Town Pride on the Town Common in June 2024 based on the gender, gender identity or sexual orientation of performers or participants or the fact that the event will include drag performance,

unlawfully discriminate on the basis of gender;

- d. The Town's policies governing use of the Town Common and other parks for free expression events are void for vagueness;
- e. Requiring RJN to provide insurance related to the conduct of persons over whom they have no control or to pay for public safety services for Small Town Pride violates Article 16 of the Declaration of Rights and the First Amendment;
- f. A Town requirement that Rural Justice Network pay for police details for Small Town Pride violates Amend. Art. 2 of the Amendments to the Massachusetts Constitution and G.L. c. 40, § 22F.

5. Awards of nominal and compensatory damages from the Defendants and an award of punitive damages from the Individual Defendants in their individual capacities, pursuant to 42 U.S.C § 1983 and G.L. c. 93, § 102.

6. An award of reasonable attorneys' fees and costs to Plaintiffs' attorneys pursuant to G.L. c. 93, § 102 and 42 U.S.C. § 1988.

7. Such other and further relief as the Court deems just and proper.

On behalf of Rural Justice Network,

/s/ Ruth A. Bourquin

Ruth A. Bourquin (BBO # 552985)

Jessica L. Lewis (BBO # 704229)

Rachel E. Davidson (BBO # 707084)

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION OF MASSACHUSETTS, INC.

One Center Plaza, Suite 850

Boston, MA 02108

617-482-3170

rbourquin@aclum.org

Verification of Complaint

I, Rob Orpilla, President of the Rural Justice Network, on this 8 day of December 2023, hereby affirm under the pains and penalties of perjury that the factual allegations of the foregoing Complaint are true and correct to the best of my personal knowledge, information and belief.


Rob Orpilla

EXHIBIT A



TOWN OF NORTH BROOKFIELD
MASSACHUSETTS 01535

OFFICE OF THE BOARD OF SELECTMEN

Town Offices
215 North Main Street
Telephone 508.867.0200
Fax 508.867.0249
selectmen@northbrookfield.net

**Request For
North Brookfield Resources**

Date of request 10/24/23 Date of event 6/29/24

Organization making request Rural Justice Network

Contact Person and Numbers Corwin Castonguay 774-922-0339 CPCastonguay@gmail.com

Number of Attending 250 Time of set up 8:00 Start Time 12:00 End Time 6:00

Town resources being requested
Town Common Electricity

INITIAL SELECTMEN'S APPROVAL _____ Date _____

POLICE CHIEF APPROVAL _____ Date _____

Any Cost or Concerns _____

FIRE CHIEF APPROVAL _____ Date _____

Any Cost or Concerns _____

EMS DIRECTOR APPROVAL _____ Date _____

Any Cost or Concerns _____

BOARD OF HEALTH (if Recycling Center to be used) _____

Any Cost or Concerns _____

SCHOOL DEPARTMENT (if School grounds to be used) _____

Any Cost or Concerns _____

FINAL SELECTMEN'S APPROVAL _____ Date _____

EXHIBIT B

Small Town Pride 2024

Proposed Date: June 29, 2024

Proposed Location: North Brookfield Common

Proposed Time: 8am set up 12-6 PM event

Overview

Historically, individuals identifying as lgbtqia+ have been barred from being who they truly are. We aim to host a community, family friendly event that provides a safe space for the celebration of individuals with queer identities.

Context

In 2021 and 2022 the Rural Justice Network successfully put on a festival style event on the West Brookfield Town Common. This event included performers, vendor booths, arts and crafts, educational materials, and community resources. Last year we had another successful event on the North Brookfield Common despite the rain.

Why North Brookfield?

Last year we had a wonderful event at North Brookfield's Common but the weather didn't cooperate. This year with some more planning we would love to have another even better event for people to enjoy. North Brookfield is the hometown of a number of our team members and has a special place in our heart.

Elements

Performances: Rural Justice Network will organize a program of family appropriate dancers, drag performers, speakers, and artists. Rural Justice Network will provide stage and all equipment necessary.

The ask: Access to electricity on the common

Vendors: Rural Justice Network will organize vendors to table at the event. Past vendors have included artists, community groups, local businesses, ect. All vendors will have appropriate licenses, insurances, and other paperwork required to operate.

The ask: Use of the common

Food: Rural Justice Network will coordinate food trucks to sell food. Food Truck businesses in conjunction with the RJN will ensure that all paperwork, inspections, and health codes are followed

The ask: Guidance as to what committees, boards, or bureaucratic process food trucks need to answer to.

Facilities: Rural Justice Network is prepared to rent port-a-potties if necessary.

The ask: Use of local bathroom facilities if available

Parking: The RJN will provide volunteers to direct traffic.

The ask: Use of the parking area near the common

EXHIBIT C



Ruth A. Bourquin
Senior and Managing Attorney
(617) 482-3170 ext. 348
rbourquin@aclum.org

April 18, 2023

Via Email and First Class Mail

Board of Selectmen
Chair, Jason Patraitis
Vice Chair, John Tripp
Member and Clerk, Elizabeth Brooke Canada
215 North Main Street
North Brookfield, MA 01535
Via: <https://www.northbrookfield.net/user/83/contact>

Re: Unconstitutional withdrawal of permit for Small Town Pride Event on
Town Common to the extent it includes any drag performance

Dear Members of the Select Board of North Brookfield:

I write on behalf of the American Civil Liberties Union of Massachusetts, Inc. (“ACLUM”) to request that this Board immediately restore to the Rural Justice Network (“RJN”) the previously approved permit for an LGBTQ+ Pride event on the North Brookfield Town Common on June 24, 2023, that includes drag performance.

The rescission by a 2-1 vote on April 11, 2023 of the previously approved permit, to the extent it allowed for inclusion of a “drag show,” clearly violates the free speech guarantees in Article 16 of the Massachusetts Declaration of Rights and the First Amendment to the United States Constitution, as well as the equal protection guarantees enshrined in Article 1 of the Massachusetts Declaration of Rights and the Fourteenth Amendment to the United States Constitution.

Moreover, it sends a horrible message of bigotry and bias, including to the children whose interests the majority asserted as justification for its action.¹

¹ Video of the March 28, 2023 meeting in which the request for resources for the event including drag performance was approved is available at <https://www.youtube.com/watch?v=0fluKP0jMcE>. Although the Board gave their approval, comments at that meeting presaged what was to come on

Bases for concerns about permit rescission

The action of this Board clearly violates free expression rights. The North Brookfield Town Common is a traditional public forum where protection for free expression rights is at its height. *Mass. Coalition for the Homeless v. Fall River*, 486 Mass. 437, 441(2020) (quoting *Benefit v. City of Cambridge*, 424 Mass. 918, 926–27 (1997)); see also *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939) (“Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions”). The government’s ability to limit expressive activity in a public forum is “sharply circumscribed.” *Perry Ed. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983).

The event scheduled for June 24, 2023 on the Town Common—entitled “Small Town Pride”—is for the purpose of politically expressive activity concerning the need for recognition and support for LGBTQ+ members of the community. The decision by a majority of the Board to rescind the previously approved permit and approve a permit only on condition it does not include any drag performance is a plainly unconstitutional content-based and indeed viewpoint-based restriction on free expression. It was based on the majority’s conclusion that a “drag show”—a term the majority never defined— is not “family friendly” and/or is “wrong.” See video recording of April 11, 2023 meeting. This is censorship based on the content of the proposed speech and the viewpoint it expresses, including that gender identity may be fluid and individuals should be treated equally regardless of how they choose to express their identity.

Such restrictions are forbidden by Article 16. *Barron v. Kolenda*, __ Mass. __, 203 N.E.3d 1125, 1138, 1139 (2023) (strict scrutiny always applies to content-based restrictions on political speech under Article 16 and “art. 16, like the First Amendment, certainly does not permit viewpoint discrimination”). In the *Barron* case, the SJC just recently emphasized how robust free expression protection is under Article 16, regardless of whether the content of speech meets individual government officials’ notions of what is sufficiently civil or appropriate.

There is no compelling government interest in preventing people dressed in clothes typically associated with a gender other than the one assigned to them at birth from appearing in a traditional public forum,

April 11, 2023, which can be viewed here:
<https://www.youtube.com/live/kggrvDTSdZo?feature=share>.

including a public forum where children will be. Such performance simply and joyfully expresses the views that one need not be bound by one's gender identity as assigned at birth and, more generally, that those who may not conform to stereotypical societal expectations in other ways should be accepted and welcomed in our communities. There is no compelling governmental interest in squelching those views, regardless of the personal views of members of the Board or other members of the public. *Barron, supra*. Indeed, the asserted interest is antithetical to a compelling governmental interest, particularly given data referenced at the March 28 Board meeting about how holding inclusive events reduces societal harms, including depression and suicide among LGBTQ+ children and adults.

Even assuming the Board's prohibition were supported by any compelling interest (which it is not), restrictions on any and all drag performance in public forums are overbroad and not narrowly tailored to serve any compelling interest. For related reasons, what is being prohibited is too vague to withstand constitutional challenge, particularly given the intersection with free expression rights.² What exactly does the rescission mean is forbidden at the June 24 event? What is the definition of drag that is being used? Is the Board purporting to prohibit anyone coming to the event in clothing associated with a gender not assigned at birth or something else? What is the definition of a "show"?³ Is the Board purporting to prohibit any person who attends in drag from dancing or singing along to music while there? Or are they prohibited "only" from dancing in some specific way? Or is the Board purporting "only" to prohibit RJN from designating a space for people specifically designated as drag performers? This vague and overbroad restriction on free expression is unconstitutional. *See, e.g., Friends of George's, Inc. v. Tennessee*, __ F. Supp. 3d __, 2023 WL 2755238 (March 31, 2023)(court enters preliminary injunction against statute making adult cabaret entertainment unlawful in any place where could be observed by a child because it engages in content and viewpoint discrimination and is too vague).

² Vagueness concerns apply with particular force in this context. *See United States v. Williams*, 553 U.S. 285, 304 (2008); *Vill. Of Hoffman Ests. V. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982) ("[P]erhaps the most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally protected rights. If, for example, the law interferes with the right of free speech or of association, a more stringent vagueness test should apply"); *Commonwealth v. Abramms*, 66 Mass. App. Ct. 576, 581 (2006) ("An additional principle to be noted is that '[w]here a statute's literal scope . . . is capable of reaching expression sheltered by the First Amendment, the [vagueness] doctrine demands a greater degree of specificity than in other contexts").

³ Would a performance like this one on Sesame Street count? <https://www.youtube.com/watch?v=f-YxjLUnnP0>

Certainly, the rescission of the permit for an event including any drag appearance cannot be justified by the assertion that such performance constitutes “adult entertainment,” as the majority sought to do. For one thing, the provisions of the zoning code that were cited apply only to “Commercial and Industrial Uses.” See Table 2, p. 16. The Small Town Pride event is not a commercial or industrial use. And the cited provisions are not applicable to use of the traditional public forum of the Town Common. In addition, while it is not entirely clear what definition of “adult entertainment” the Board was referring to,⁴ no such definition could constitutionally be applied to bar protected expression based on its content and viewpoint in a traditional public forum. The fact that some members of the Board or the public find the expression “not family friendly,” “wrong” or “not appropriate” (as one member of the public said at the April 11 meeting) cannot justify free expression restrictions. While speech that rises to the level of true obscenity under strict standards set by the U.S. Supreme Court is unprotected expression, *Miller v. California*, 413 U.S. 15 (1973)(among other things, must lack “serious literary, artistic, political or scientific value”), there can be no argument that the drag performance planned for this event qualifies as such. Moreover, if individual parents do not wish their children to view such performances, they can direct them not to, including those who live across the street from the Common. The fact that someone chooses to live across the street from a traditional public forum, or to engage in activities there, does not give them a right to control what other members of the public can express on property owned by and dedicated to use and expression by the public as a whole.⁵

In addition to violating free expression, the restriction against drag performance also constitutes unlawful discrimination on the basis of sex under Article 1 of the Declaration of Rights as Amended. *Commonwealth v. Carter*, 488 Mass. 191, 202 (2021) (holding equal protection guarantees apply

⁴ To the extent the zoning by laws were amended as proposed in 2021 to add a definition of “adult entertainment,” see <https://www.northbrookfield.net/sites/g/files/vyhlif3576/f/news/specialtownmeetingwarrant120321.pdf> (referring to “depicting, describing or relating to specified sexual activities or specified anatomical areas”), there is no reason to believe the planned performance would qualify. Certainly the dance at the West Brookfield event in 2022 available on video would not qualify. And in any event this definition is overbroad and unconstitutional as applied to political speech in a traditional public forum, where by its terms it could be used to suppress a wide variety of constitutionally protected expression, including about preventing breast or prostate cancer for no compelling governmental reason).

⁵ The Board’s action is also inconsistent with the right to assemble in a “peaceable and orderly manner” to “consult upon the common good” enshrined in Article 19 of the Declaration of Rights. *Barron*, 203 N.E.3d at 1134-37.

to sexual orientation and transgender status under Declaration of Rights). But for the gender, sexual orientation and/or gender identity of the performer, someone dressing up in flamboyant clothes and performing would not constitute “drag” and therefore would not be proscribed.

Conclusion and request

For the foregoing reasons, and in order to avoid potential litigation over this issue, we urge you immediately to restore the prior permit approval. **Please let us know on or before Wednesday, April 26, 2023, whether the Town intends to restore the prior approval for the event including drag performance.**

Although our reason for writing now relates to the partial permit rescission for the June 24 Small Town Pride event, we also urge you to take steps to more generally revise your bylaws, policies and practices concerning authorization for free expression in public forums. The bylaws are full of free expression problems and the policies, as we understand them, may require a permit applicant to pay public safety services and provide insurance covering damages that might be caused by people over whom the permit applicants have no control – perhaps even those who are seeking to disrupt their event. Such policies and practices violate constitutional free expression protections.

The Town bylaws⁶ discuss permits only for “parades” on public sidewalks or streets, while providing no standards to guide when and under what conditions a permit will be granted, *see* Chapter VIII, Section 5, and prohibit use of alcohol in public parks, Chapter VIII, Section 8. Otherwise they are silent on if, when, and under what conditions a permit to use a public park is required and must be granted. Such lack of standards is anathema when free expression rights are involved. To qualify as a reasonable time, place or manner regulation, the provision must contain “narrow, objective, and definite standards” to guide discretion, *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992) (citation omitted). The absence of such standards is “inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view.” *Id.* at 130 (citation omitted).⁷

Requiring those seeking a permit to use a public park to pay for public safety services is also an unconstitutional abridgement on free speech and imposes an unlawful tax under state law for the reasons set forth in the Court papers filed in this former case against the City of Cambridge, available here: <https://www.aclum.org/en/cases/massachusetts-peace-action-v-city-cambridge>.

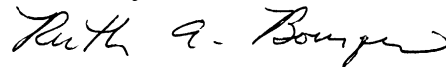
⁶ https://www.northbrookfield.net/sites/g/files/vyhlf3576/f/uploads/general_by-laws_12-2018.pdf

⁷ Sections 2, 3 and 4 in Chapter IX of the bylaws also raise very serious free expression concerns.

Similarly, requiring permit applicants or recipients to provide insurance for such events is not a narrowly tailored time, place or manner restriction, and thus also in violation of free expression principles. *See, e.g., See, e.g., iMatter Utah v. Njord*, 774 F.3d 1258, 1268-1270 (10th Cir. 2014) (insurance requirement violated the First Amendment because it was not narrowly tailored to specific risks and “require[d] permittees to purchase insurance against risks for which the permittee could not be held liable,” including the conduct of third parties).⁸

We look forward to hearing from you at the earliest opportunity that the original permit approval is being restored. Feel free to contact me if you or legal counsel for the Town have any questions.

Sincerely,



Ruth A. Bourquin

cc: Town Clerk Tara Hayes, via
<https://www.northbrookfield.net/user/1794/contact>
Rural Justice Network, Inc.

⁸*See also Invisible Empire of the Knights of the Ku Klux Klan v. Mayor of Thurmont*, 700 F. Supp. 281, 285 (D. Md. 1988) (insurance requirement invalid because government “made no showing that insurance or a hold harmless agreement is even necessary”); *Long Beach Lesbian & Gay Pride, Inc. v. City of Long Beach*, 17 Cal. Rptr. 2d 861, 877-78 (Cal. Ct. App. 1993) (finding that the insurance requirement offered “extremely limited” financial protection to the city and went well beyond the possible parade hazards, like automobiles, that might traditionally call for insurance). In *Courtemanche v. General Services Administration*, 172 F. Supp.2d 251 (D. Mass. 2001), the court, in evaluating the legality of an indemnification/hold harmless provision as a condition of receipt of permit, highlighted that insurance requirements have often been struck down for infringing on free speech. *Id.* at 268-69 (citing *E. Conn. Citizens Action Grp. v. Powers*, 723 F.2d 1050, 1057 (2d Cir. 1983) (invalidating state transportation department’s \$750,000 liability insurance requirement for political march); *Collin v. Smith*, 578 F.2d 1197, 1207-09 (7th Cir. 1978) (concluding that the government’s concession that it could not apply a \$300,000 liability insurance requirement to a political march was “plainly mandated by the . . . pertinent caselaw”); *Wilson v. Castle*, 1993 WL 276959 (E.D. Pa. 1993) (insurance requirement unconstitutional because it was not sufficiently narrowly tailored); *Collin v. O’Malley*, 452 F. Supp. 577, 578-80 (N.D. Ill. 1978) (ordinance requiring individuals to obtain public liability and property damage insurance in order to hold assemblies in a public park was unconstitutional)).

EXHIBIT D



TOWN OF NORTH BROOKFIELD
MASSACHUSETTS 01535

OFFICE OF THE BOARD OF SELECTMEN

Town Offices
215 North Main Street
Telephone 508.867.0200
Fax 508.867.0249
selectmen@northbrookfield.net

**Request For
North Brookfield Resources**

Date of request _____ Date of event July 1st
Organization making request Rural Justice Network
Contact Person and Numbers Corwin Cartongray 774-923-0339 cpc@cartongray.com
Number of Attending 250 Time of set up 8:00 Start Time 12:00 End Time 6:00
Town resources being requested
Town Common Electricity

INITIAL SELECTMEN'S APPROVAL _____ Date _____

POLICE CHIEF APPROVAL [Signature] Date 01/16/2015

Any Cost or Concerns 1 Detail Officer and additional if deemed necessary
** weekend detail rate PHS and insurance*

FIRE CHIEF APPROVAL [Signature] Date 1/4/25'

Any Cost or Concerns Have good truck, pumps (inspected)

EMS DIRECTOR APPROVAL _____ Date _____

Any Cost or Concerns _____

BOARD OF HEALTH (if Recycling Center to be used) _____

Any Cost or Concerns _____

SCHOOL DEPARTMENT (if School grounds to be used) _____

Any Cost or Concerns _____

FINAL SELECTMEN'S APPROVAL _____ Date _____

EXHIBIT E

April 28, 2023

Brian W. Riley
briley@k-plaw.com

Ruth A. Bourquin, Esq. (rbourquin@aclum.org)
American Civil Liberties Union Foundation

Re: Town of North Brookfield – RJN Event on June 24, 2023

Dear Attorney Bourquin:

I am following up on our previous conversations on this subject and Rural Justice Network's ("RJN") proposed Small Town Pride event on the North Brookfield Town Common on June 24, 2023, and I wish to clarify the confusion regarding it. I am also sending this letter to you as a public document and to reiterate the Town's position on the matter. As you know, after a representative of RJN initially addressed the Board of Selectmen ("BOS") in late February, Corwin Castonguay and Tashena Holmes were before the BOS on March 28, 2023, seeking whatever approval was needed for this event on the Town Common and requesting certain "resources" for the event. I have not seen the request, but you informed me it was to have a food truck onsite (said truck should contact the Board of Health to see if any permit is required), access to electricity and to utilize a portion of the adjacent Police Station parking lot. While some members of the Board expressed trepidation over aspects of the event, specifically a drag performance, the Board ultimately voted 2-1 to give authorization to use the Common on June 24 as proposed. The Board made the vote contingent on receiving a certificate of insurance from RJN and for a police detail to be hired (more on these below). Mr. Castonguay stated that these conditions were acceptable.

On April 11, however, the Board took another vote to authorize the event but without the drag performance. After considering your letter dated April 18 and my own discussions with Board members, the Board met again on April 25 and took two votes. The first, which was approved by a vote of 3-0, was to rescind the April 11 vote that withdrew authorization for a drag performance. The second motion was to "reapprove" the event as originally proposed; this vote was one in favor and two abstentions. When Selectboard member Canada asked whether the event was still authorized, the chair answered "yes."

I first note that as a matter of procedure and Massachusetts law, a vote of one in favor and two abstentions on a three-member board is essentially a nullity and does not pass. However, the result of the April 25 meeting is that the vote taken on March 28 has not been rescinded or otherwise altered (since the Board expressly rescinded the April 11 vote). As such, the RJN event remains authorized consistent with that March 28 vote. I am aware that certain comments of Board members at the meeting and that have later appeared in the press have caused your client concern as to whether the event is still approved. It is my intention by this letter to state that the March 28, 2023 vote of the Board remains in place, approving your client's use of the Town Common as originally proposed. While some Board members expressed their personal opinions of aspects the event, as is

Ruth A. Bourquin, Esq.

April 28, 2023

Page 2

of course their right, the action the Board of Selectmen took on March 28 is what represents the formal action of the Town government.

I note additionally that when the Chair stated on April 25 that “no approval is needed,” he was referring to the fact that while a parade on public ways, for example, requires a permit from the Board under Town bylaws (due to street closings, etc.), there is no such “permit” requirement under the General Bylaws for an event like this – rather, the Board may authorize an event to have exclusive use of a piece of Town property (exclusive in the sense of another event not being authorized at the same time, clearly the public may come and go on the Common in the normal fashion).

I trust my statements above will enable RJN to feel confident that it may proceed with planning for the June 24 event and that there is no need for further insinuations of litigation regarding this matter. I assure you that I have impressed on the Board members that it is in everyone’s best interest to leave the March 28 authorization in place, and that is the status.

As noted above, the Board did state in its motion of March 28 that the authorization was contingent on RJN providing a certificate of insurance and a police detail for the event. As I previously advised you, it is KP Law’s policy to always advise our municipal clients that if there is any type of privately sponsored sizeable event sought to be conducted on city or town property, we strongly recommend that the private party or group provide a certificate of insurance naming the municipality as an additional insured. This requirement was not made due to the content of the RJN event, but only as sound policy for the Town’s protection for any private event on the Town Common. We are not asking that RJN insure the Town against actions or events beyond RJN’s control, but for coverage such as Mr. Castonguay informed the Board that RJN has provided to multiple other municipalities to cover similar events.

I would state the same position for the police detail, that it was not requested due to the what the event is about but as a matter of course for sizeable events on the Town Common, regardless of what group is sponsoring it. For example, on the upcoming Memorial Day weekend (as on the same weekend in prior years), there will be a carnival on the Town Common, sponsored by the private Coalition for a Healthy North Brookfield with carnival attractions by Rockwell Amusement and Promotions, Inc. In order to protect the Town and Town Common, as well as attendees, the Board requires a certificate of insurance and a paid police detail for this event. I offer this as an example to show that the insurance and police detail requirements the Board voted on March 28 were not imposed due to the nature or expressive content of RJN’s event, but rather as a matter of course for privately sponsored events on the Town Common. I would also note again that RJN’s representatives agreed to both conditions on March 28.

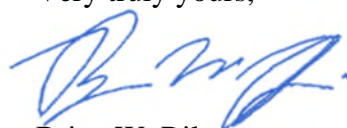
Ruth A. Bourquin, Esq.

April 28, 2023

Page 3

As stated above, I hope your client will feel comfortable that the June 24 event has the authorization needed from the Board of Selectmen. RJN should contact the Board of Health regarding the food truck, bathroom facilities and any other practical aspects of having a successful event.

Very truly yours,



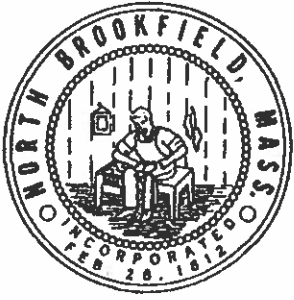
Brian W. Riley

BWR/awl

cc: Board of Selectmen
Board of Health

861853/NBRO/0001

EXHIBIT F



TOWN OF NORTH BROOKFIELD
MASSACHUSETTS 01535

OFFICE OF THE BOARD OF SELECTMEN

Town Offices
215 North Main Street
Telephone 508.867.0200
Fax 508.867.0249
selectmen@northbrookfield.net

Request For
North Brookfield Resources

Date of request 1/30/23 Date of event June 24 July 1st

Organization making request Rural Justice Network

Contact Person and Numbers Corwin Castonguay 774-922-0339 c@castonguay.com

Number of Attending 250 Time of set up 8:00 Start Time 12:00 End Time 6:00

Town resources being requested
Town Common Electricity

INITIAL SELECTMEN'S APPROVAL Egbert Brodeur Canada Date 3/28/2023

POLICE CHIEF APPROVAL [Signature] Date 01/16/2023

Any Cost or Concerns 1 Detail Officer *weekend Detail RATE & HIS PAID INSURANCE AND ADDITIONAL IF DEEMED NECESSARY

FIRE CHIEF APPROVAL Jonah Foley Date 1/4/23

Any Cost or Concerns Have good Trade permits (Insulated)

EMS DIRECTOR APPROVAL _____ Date _____

Any Cost or Concerns _____

BOARD OF HEALTH (if Recycling Center to be used) _____

Any Cost or Concerns _____

SCHOOL DEPARTMENT (if School grounds to be used) _____

Any Cost or Concerns _____

FINAL SELECTMEN'S APPROVAL Egbert Brodeur Canada Date 3/28/2023