



BERCHEM, MOSES & DEVLIN, P.C.

ATTORNEYS & COUNSELORS AT LAW

MEMO

DATE: APRIL 15, 2015
TO: REPRESENTATIVE TOWN MEETING (RTM) MEMBERS
FROM: IRA W. BLOOM, TOWN ATTORNEY
GAIL KELLY, ASSISTANT TOWN ATTORNEY
RE: RTM REVIEW OF CERTAIN ZONING ACTIONS

Section C10-4 of the Charter provides the power to the RTM to review actions by the Planning & Zoning Commission (“P&Z”) “adopting, amending or repealing any zoning regulation or fixing or changing the boundary of any zoning district, or a negative 8-24 report...” Accordingly, this power will be utilized by the RTM on April 28, 2015 regarding the P&Z’s recent rezoning of the Baron’s South property to DOSRD#2.

This provision was part of our original special act charter, and it is a provision not shared by many municipalities. The RTM’s authority is limited to either adopting or rejecting the proposed resolution. The RTM has no authority to modify or amend the decision, nor can it delay or otherwise postpone acting upon the resolution to a later date. The resolution itself will be a proposed resolution to reverse the P&Z action, as is customary. The Charter section states that the resolution must be adopted by the affirmative vote of two-thirds of the total number of RTM members. This is in contrast to other sections of the Charter which require a percentage vote of those RTM members “present and voting.” Accordingly, the resolution will need the affirmative vote of 24 members to reverse the decision of the P&Z.

For many years this review section was utilized sparingly by the RTM. In more recent years, it has been used several times. Questions arose several years ago as to the scope of the RTM review. How broad should it be? What issues should be considered? A committee of RTM members was appointed to study this question and develop an RTM standard of review for this section. Both Gail and I worked with this committee in 2010. The Committee spent multiple weeks reviewing this issue, considered a variety of interpretations of its review power under the Charter, and ultimately produced the rule set forth in Section 162-25, Standard of Review (see attached). The rule is an official RTM rule and governs the review pursuant to Section C10-4. It will be up to the RTM to interpret its own rule.

Nevertheless, we make the following points:

1. The RTM review pursuant to this Charter section is not limited to procedural issues. Indeed, a number of the prior RTM reviews have been based upon substantive issues.
2. Section 162-25 states that the RTM, in its legislative capacity, will be guided by land use criteria. These criteria include, but are not limited to, the POCD and general

health, safety and welfare considerations. There are other provisions in the RTM rule and it is recommended that everyone review them.

3. We suggest that the RTM review should be governed by principals of fairness and due process. In other words, all concerned parties should be heard and given an opportunity to express their viewpoints.
4. The RTM is being asked specifically to decide whether or not to reverse the P&Z designation of the Baron's South property as DOSRD#2. That is the specific issue before the RTM.

Both Gail and I will be available before and at the meeting to answer additional questions.

IWB/kaa

RESOLUTIONS

(1)

RESOLVED: That in order to assist in the implementation of Section C10-4 of the Westport Town Charter, the Representative Town Meeting (“RTM”) hereby amends the Representative Town Meeting Rules of Procedure by adding the following Article XI.

ARTICLE XI

REVIEW OF ZONING ACTIONS

162-25 Standard of Review

The RTM review of a Planning and Zoning Action pursuant to Section C10-4 of the Town Charter shall not be strictly limited to a review of the Planning & Zoning Commission (“P&Z”) record. Rather, the RTM shall be permitted to receive additional comments and materials outside of the original record.

The RTM review, in its legislative capacity, will be guided by land use criteria. These criteria include, but are not limited to, the Town of Westport’s Plan of Conservation and Development and general health, safety and welfare considerations.

RTM members participating in the review of a P & Z action should become familiar with the P & Z record prior to the RTM meeting.

162-26 Discussion and Debate

Petitioners, P & Z Commission, applicant/property owner and statutory intervenors shall be granted a reasonable opportunity to speak to the RTM.

162-27 Additional Information Received

Written materials relevant to the review should be shared with the entire body by providing a copy to the Town Clerk.