

RTM PLANNING AND ZONING COMMITTEE REPORT
Review of Planning and Zoning Amendments 625
June 13, 2011

The committee met on Tuesday May 31 and Wednesday June 8, 2011 to review the Planning & Zoning Commission decision on text amendments 625 (Senior Residential Housing) under section C-10 of the town charter at the request of at least 20 electors.

Attending on different nights of both meetings: Committee ó Linda Bruce, Diane Cady, Heather Cherry, Joyce Colburn, Bob Galan, Jay Keenan, Matthew Mandell, Lois Schine, Judy Starr. Along with a number of other RTM members. Planning and Zoning ó Ron Corwin, Ellie Lowenstein, Larry Bradley. Lead Petitioner ó Bart Shuldman, Applicant First and Second Selectmen Gordon Joseloff and Shelly Kassen Public ó 30 residents.

A website was created for RTM and public review of video and documents associated with this appeal at www.westportd1.com.

As there were two nights of hearings the information being reported is not always in chronological order.

Mr. Shuldman, presented the residents' case for why the text amendment should be overturned.

He first made it clear his appeal was not about being against senior housing, but about finances, access by Westport residents and what is best for all residents.

Mr. Shuldman pointed out that Westport along with the rest of the country is in a financially difficult time. That the Baron's property is a valuable resource and its use and or sale affects the entire community. The Town has pension issues, Other Post Employment Benefit (OPEB) obligations and that taxes would be going up. He pointed out this OPEB obligation could now be well over \$100 million with the addition of employees not counted prior. He also said that Westport had one of the highest per capita debts in the entire country and that seniors would be most affected by such tax increases.

He went on to say that there is no plan on the table, other than use of the land for senior housing and a nursing home. That without a plan it was unknown what the impacts to our infrastructure would be and in turn the costs to increase these or to supply them for this future project. He questioned what the costs would be for us to administer this as well. He called this "putting the cart before the horse." He also thought that meetings, held by the appointed committee (Baron South Committee (BSC)) on this project, should be held in the evenings when everyone could attend and observe rather than during the day when interested parties are at work.

He argued that most Westporters would not benefit from this plan. First that only a minute number of residents would get to live there or be helped by the nursing facility.

That money they have already spent and will spend through their taxes will not benefit them, but instead this small minority. He added that there was no way to guarantee that Westporters themselves would get to live and benefit from this project. That fair housing laws make such guarantees impossible and that was reason enough not to have us give this land away.

He continued to say that the 60% affordable housing aspect would preclude many Westporters, as their biggest asset, their home, would be used in a calculation for a test of need - that 2% of assets is calculated as income. He also wondered how this would work since there was a moratorium on the creation of new nursing beds? He also questioned what the need is here in Westport and in other communities as well as whose beds would these be.

Planning Zoning was represented by Chairman Ron Corwin. He said they were responding to a request by the First Selectman to address use of Town Land and to look at a land use issue. He stated that the use proposed was consistent with the 2007 Town Plan of Conservation and Development. That it met the needs of seniors and increased the mix of housing options, specifically affordable.

The commission made changes to the proposed text to improve and strengthen it. It allowed for private development, subdivision and sale, but that these issues would have to be looked at separately in the future. He pointed out that they deleted the proposed waiving of excavation and fill requirements, mandated that affordable units come first and that 35% of the housing units had to be built before any other subsequent additional aspects of the project are begun.

It was discussed that section 32-15, Managed care, was left in place, instead of being modified, which allowed for private development on private property and that 32-15a was created through text 625 to allow for a Senior facilities on Town Land.

First and Second Selectmen Gordon Joseloff and Shelly Kassen, as the applicants, then spoke to explain their reason for bringing this to the P&Z and to defend the approval of text #625.

Their main contention was that to move forward with any project the Town had to show prospective developers that the Town was serious and having a property legally zoned for such activity was needed. That 625 was enabling legislation to then allow the Selectman's appointed committee to seek a Request for Proposal (RFP) from interested parties. They said that no money had been spent to date on this concept, though in a subsequent press release the First Selectman corrected that statement, saying that the committee was right when it was pointed out that the Weston and Sampson Report, being used as the basis for selecting Baron's South as the primary property, cost the town \$50,000. In further discussions it was disclosed that the Town Attorney had billed possibly \$25,000 for services related to this project, but that was within Town side budget parameters. Other town staff had also spent time, but they are salaried. The rest of the work was done by volunteers.

Mr. Joseloff said that he believed there could be a tax benefit in the long run from the proposed project and the property now in decay would be rehabilitated. They said this would benefit seniors and it was time to give back to members of our community who have lived here, contributed their time and paid taxes all these years.

The additional concept of a skilled nursing facility being added to the housing was in keeping with the idea of aging in place and was needed and would put Westport ahead of the game in elder care.

During a long Q&A different people represented the Selectmen. Town Attorney Ira Bloom reiterated that different forms of preference for Westport residents were allowed and that funding sources often dictated the outcome. A memo was produced on this issue at the request of the RTM committee which could not outline specifics, as time and cost would be factors, but said that anyone responding to the RFP would have to outline their process to prove preference. The Town attorney also said that the Board of Finance (BOF) had a charter given opportunity to review the lease and that if they rejected it, the First Selectman could then bring it before the RTM for approval, with a 70% affirmative vote. A memo on this was requested by the committee and delivered.

In an email from Ms. Kassen to the Chair of the RTM committee in response to a question about further BOF involvement, she said the board would be involved in the shaping of the RFP. Mr. Joseloff was asked if he concurred and his answer was yes.

During a 25 minute interchange specifically concerning future RTM involvement beyond that of the lease, RTM members pressed Mr. Joseloff for a future RTM say in the process. The answer was not initially forthcoming as he placed the burden of involvement and participation on individual RTM members outside of the Baron's Committee and RTM structure. Finally the First Selectman agreed to bring the RFP to the full RTM for a vote. This is in addition to RTM Committees offering their own input into the RFP if they so chose. While the full RTM vote would be non binding, by charter, he said he would not ignore it, especially if there was a clear position taken.

As to financial issues, Rick Redniss, a planning professional and a volunteer to the project, outlined how a demonstration site plan would allow for parcels of the property to be subdivided and built along side in kind or sold off to cover costs. He also reiterated that the text amendment was needed to be able to move forward with the RFP. He also explained that most people in such developments are from the community where they are built.

The issue of the mandated 60% affordable was questioned as being too high. Ms. Kassen said that it could be modified post RFP if needed. She also said that they have had interest in this project from both for-profit and non-profit organizations and the BSC would be doing site visits of both in CT and out of state.

Barbara Butler, Director of Westport's Health and Human Services explained the need for the Full Care Facility, which had been called a Nursing Home or Skilled Nursing Facility. A memo on terms was requested by the RTM committee and was delivered. It was all about aging in place and convenience for Westporters who now have to use out of town facilities.

The RTM P&Z Committee heard from the public on both evenings. There was both support and opposition for the project as well as questions and requests.

Some of the requests were:

1. That the RTM have a future say. That this bite of the apple was not specific to the project itself.
2. That only senior housing be built and not the Full Care Facility. That there was no study or survey to support the latter.
3. That the property be left as open space.
4. That other properties, not so valuable, be considered instead.

Other comments:

Time to do something for the seniors, the Town does for kids now it's their turn.

We need both housing and nursing.

Deny it and have the Baron's Committee figure out what is needed and then come back for a new text amendment.

Baron's is not right for seniors, too hilly.

Full care is not what is needed, but assisted instead, that models are changing.

YMCA should be considered instead or in conjunction with senior housing.

This proposal lacks a full vision for the needs of the town.

The RTM Committee heard closing comments from Ms. Lowenstein representing P&Z saying that they support what they passed and it lays the foundation for a future project. Ms. Butler for the applicant said it optimizes a community asset and will serve many who we'd never know need it. Mr. Shuldman reiterated the lack of planning and potential costs, especially since OPEB has become an issue of concern.

The committee closed comment and began to discuss the amendment.

The P&Z did a fine job fielding this amendment and the committee thanks them for a job well done. Specifically, they removed a requested waiver of excavation and fill requirements which would have given the opportunity for excessive modification of the natural hilly terrain. The P&Z mandated that the affordable housing be built first and that no other parts of the project could commence until the housing was built. One issue specific to the text that could be tightened is the discretion given to a future P&Z on the height requirement which leaves open what is the height to any and extra stories of any building.

While the P&Z might have performed admirably and the text passed muster, it is in the purview of the RTM to look beyond those issues as this is a legislative decision. The

general health and welfare of the Town of Westport must be protected and thus the RTM can look at issues such as finances, impacts and other uses of the land, and whether or not Westport residents would benefit or not from any outcome fostered by the amendment.

Mr. Shuldman brought up reasonable issues which fall within that purview and the committee thanks him for taking the time as a citizen to air these issues in a public forum. That once again the Town Charter offering the RTM oversight of the P&Z when in their legislative capacity works as part of the checks and balances of our democracy.

The committee agreed with many of the points offered by Mr. Shuldman and others opposed to the text amendment, that future costs are unknown and that it is unclear whether Westport residents will get to live there. That sale of the property, or a lease to a for-profit may be better, though some believed sale to be unacceptable.

During the discussion it was believed the 60% affordable number might well constrain the RFP to be only accepted by a non profit and thus limit options and possibly stunt competition and not give Westport its best option. Some also deemed that this number might be too high to give enough Westporters, who do have the means, to be able to live there as the number of market rate units might be too few.

It was pointed out that indeed there is no evidence, other than anecdotal, backing the need for a nursing facility. In fact, the Weston and Sampson report discusses housing, nothing more. It was also pointed out that Weston and Sampson along with the First Selectman said the YMCA could not fit, yet the demonstration site offered for housing and nursing far exceed that of the YMCA.

But a majority of the committee also felt there was a demand and need for senior housing, that a Full Care Facility, while the need and process unclear was something to look into. The committee understood that this was not an approval of any specific project, but an approval of a text amendment that would enable the pursuit of a number of possibilities. The Committee while concerned with many of the unknowns, felt that the Selectman's committee would not be able to proceed without a legal zone that would show the Town's interest to a developer or operator. A minority believed that the result of bids from an amendment, that created unknowns, could bring unintended consequences that afterwards would be difficult if not impossible to correct. There will be a separate minority report.

The committee felt that its hard fought concession from the First Selectman of an RTM vote on the RFP and the offer of RTM input in shaping the RPF would help guide the project and assuage, if not secure, the outcome desired by the residents of the town. This input was discussed and a check list was derived and the RTM would expect such documents be submitted by the BSC for review and input.

- a. Defining the objectives for the RFP.
- b. Preparing a basic outline for RFP that structures its component parts.
- c. Identifying the types of potential bidders and necessary qualifications.

- d. Preparing a draft of the detail specifications for the RFP, including permitted alternative responses.
- e. Preparing revisions of the RFP resulting in a final version.
- f. RTM vote on RFP.
- g. RTM review and input of RFP responses and discussion of future RTM involvement.

In addition that assurances both in the charter and offered by the First Selectman that the Board of Finance would vote on the lease and would be involved in the financial oversight of the RFP also gave the committee comfort.

Concerned that an outright recommendation to sustain the text might be taken as an approval of the process without such oversight moving forward, a process that up to this point was not, to many in the public and RTM as transparent as it could have been, a motion to take no action was made. This essentially would sustain the text amendment, but without endorsement.

On a resolution to recommend to take no action proposed by Ms. Schine and seconded by Mr. Galan - discussion surrounded goals, not being an endorsement of the project and our obligation to make a call. In the end, it was felt that the RTM Committee, after 10 hours of hearings, had to make an affirmative or negative call, regardless of whether or not it was a full endorsement. The motion Failed 2-4 For Galan & Schine. Opposed Cherry, Colburn, Mandell, Starr.

It was noted that many of the concerns held by what would become the minority of the committee were valid, but the difference was the majority felt the text amendment was enabling legislation that would allow the Town to move forward on the concept of providing senior housing and that the RFP and the answers back from developers would further guide the town to a better outcome.

On a resolution to recommend sustaining amendment 625, by Mr. Galan and seconded by Ms. Schine the vote passed 4-2. Yes - Cherry, Galan, Mandell, Schine, No - Colburn & Starr. It is noted that Ms. Cady indicated, prior to having to leave, she would vote in favor of sustaining.

Submitted by
Matthew Mandell
Chair RTM Planning and Zoning Committee