



BERCHEM, MOSES & DEVLIN, P.C.

ATTORNEYS & COUNSELORS AT LAW

ROBERT L. BERCHEM
MARSHA BELMAN MOSES
MICHAEL P. DEVLIN†
STEPHEN W. STUDER*
RICHARD J. BUTURLA
FLOYD J. DUGAS
ROLAN JONI YOUNG
JACOB P. BRYNICZKA
IRA W. BLOOM
JONATHAN D. BERCHEM*
WARREN L. HOLCOMB*
MARK J. KOVACK
MICHELLE C. LAUBIN†
BRYAN L. LeCLERC†
BRIAN A. LEMA
DOUGLAS E. LOMONTE
BRIAN W. SMITH

OF COUNSEL

JOHN W. HOGAN, JR.

75 BROAD STREET
MILFORD, CT 06460
TELEPHONE (203) 783-1200
FACSIMILE (203) 878-2235

27 IMPERIAL AVENUE
WESTPORT, CT 06880
TELEPHONE (203) 227-9545
FACSIMILE (203) 226-1641

PLEASE REPLY TO
WESTPORT OFFICE

WWW.BMDLAW.COM

MICHAEL P. BURDO†
RICHARD C. BUTURLA
MARIO F. COPPOLA
AMY CORBETT DION
JODIE L. DRISCOLL†
RYAN P. DRISCOLL†
CAROLYN MAZANEC DUGAS
GAIL I. KELLY†
MICHELLE DEVLIN LONG
JEFFREY P. MOGAN
JENNIFER L. TURNER
MEGAN A. SMITH
JUSTIN STANKO
SHELBY L. WILSON

* ALSO ADMITTED IN CALIFORNIA
* ALSO ADMITTED IN MASSACHUSETTS
* ALSO ADMITTED IN NEW JERSEY
† ALSO ADMITTED IN NEW YORK
† ALSO ADMITTED IN PENNSYLVANIA

MEMO

TO: Members, Board of Finance

CC: Hon. Gordon F. Joseloff, First Selectman

FROM: Ira. W. Bloom, Town Attorney *IWB*

DATE: April 11, 2011

RE: Board of Finance Review of Leases, Acquisitions and Dispositions

You have asked for my opinion regarding the Westport Charter provision pertaining to the Board of Finance power to “recommend... leases, acquisitions or dispositions of real property.” This power is contained in section C6-2 of the Charter, which specifically provides that the Board of Finance “recommend,” subject to the other provisions of the Charter, any such lease, acquisition or disposition of real property. This authority is contained in the same section describing the other powers and duties of the Board of Finance, which include the power to “recommend” appropriations. The lease provision was a result of the most recent Charter revision, but is similar to appropriations, where the Board of Finance can only “recommend” and, as noted below, the failure to do so can be overridden by the RTM.

Section C5-1D of the Charter is entitled “Review [by the RTM] of Board of Finance Action.” Although the wording of this Charter section is not precise, this section essentially discusses the possibility that the Board of Finance “fails to recommend” various items such as appropriations, as well as leases, acquisitions or dispositions of real property. In such event, the RTM may “authorize... such lease, acquisition or disposition

of real property” upon the affirmative vote of 70 % of the members of the RTM, present and voting.

As a practical matter, I cannot recall a situation where the Board of Finance has flatly “failed to recommend,” thus triggering the RTM review power pursuant to section C5-1D. In practice, any concerns or objections raised by Board of Finance members regarding leases have been discussed with the First Selectman, negotiated, and resolved. It is anticipated that such a cooperative approach will continue based upon First Selectman Gordon Joseloff’s comments at your public meeting.

A related question has been asked regarding commitments to return to the Board of Finance which might have been made by former First Selectwoman Diane Farrell at the time of the purchase of the Baron’s South property. I have reviewed RTM minutes from October 20, 1998, when the RTM was asked to appropriate the purchase funds for the Baron’s South property. I was unable to find any such commitments. I have not had an opportunity to review any other minutes. However, it is obvious that any such statements by a past First Selectman, even if they are clear and definitive, are not legally binding. Whether they are morally binding or have any other persuasive impact will have to be evaluated by others.

Finally, please note that Conn. General Statutes §8-24 requires a positive report on a sale, purchase or lease of municipally owned property from the Planning and Zoning Commission. A proposal disapproved by the P&Z can still be adopted by the town by a two-thirds vote of the RTM.