

THESE MINUTES ARE SUBJECT TO APPROVAL BY THE CHARTER REVISION COMMISSION

The Charter Revision Commission held a meeting on Wednesday, November 12, 2014 in the Council Chambers at the Municipal Building, 3 Primrose Street, Newtown, CT Chairman Jeff Capeci called the meeting to order at 7:30pm.

Present: Kevin Burns, Jeffery Capeci, Robert Hall, Tom Long, Dan Wiedemann, Eric Paradis, James Ritchie, Deborra Zukowski

Absent: George Guidera

Also Present: Police Commission Chairman Paul Mangiafico, John Voket of the Newtown Bee

VOTER COMMENTS: NONE

MINUTES: Mr. Wiedemann moved to approve the minutes of the regular meeting of 10/29/14. Mr. Hall seconded, motion unanimously approved.

COMMUNICATIONS – Jim Juliano from the Edmond Town Hall Managers will be at a future meeting.

NEW BUSINESS

Discussion with Police Commission, Chairman Paul Mangiafico regarding constables in Charter Section 2-110 –Special constables report to Chief of Police. There are no special constables at this time and the after a discussion with the Chief Kehoe, they should be removed from the charter. There are also regular constables that are appointed by the First Selectman. They are able to serve civil processing papers within the town only. Currently there are 7 constables appointed to a two year term. Mr. Mangiafico has spoken with two and they have indicated that they are appointed but they do not do anything. It appears at the surface that it should be done away with it. By some of his research, constables is an old idea that was carried to today. At one time there were county sheriffs and they had deputy sheriffs. Constables were a training ground for deputy sheriffs and then later on for Marshals. The question as to eliminating regular constables is not as clear to the Police Commission since they do not report to the Chief.

The people who do traffic duty in front of the schools and church do not have arrest authority. Special constables wouldn't have arrest authority either because they would have to be trained or have handcuffs. It is policy in Newtown that anyone under arrest is to be handcuffs. Mr. Mangiafico does not believe that special constables are issued any gear and not trained like a police officers.

Rather that look back at what the town did 40 or 50 years ago, they are going to contact CCM and find out how other communities deal with special and regular constables.

2015 Meeting Calendar – 1/5, 1/21, 2/2, 2/17, 3/2, 3/16, 4/1, 4/21, 4/29 were dates discussed. Mr. Capeci will do a calendar including these dates as well as dates through July with meeting places to be determined and will bring it back to the commission at the next meeting.

UNFINISHED BUSINESS

Charter Property Disposition Sections; 7-90 and 7-90D – Mrs. Zukowski found omissions or different from the original charter and the proposed draft (Attachment A) and drafted a gap analysis (Attachment B). The commission needs to go through the gaps to find out if that was by design or omitted for some other reason. Then there will be a final mark up of the draft that takes into account both the gaps and the proposed language and come to a final version that takes everything into account. When the final language is done, it will be distributed to the appropriate town departments and then to legal Council.

There is a scattering of references to either the CT general statutes or a specific statute in the current charter.

Mr. Hall stated that he believes that the purpose of making a general reference to the CT general statutes is to avoid the situation, where you start spelling out statutes that might govern, or be relevant, and you may miss something. If you reference just the CT general statute, you don't miss anything.

Missing the delineation of types of properties that P&Z can require. Mr. Hall explained that the concept he had when he drafted this was that bullet A which is the P&Z section. P&Z is the sole arbitrator of what is acquired as long as it is simple. The Selectman have a function if the land is encumbered. P&Z has the authority to acquire open space and that is what bullet A was dealing with. In the existing language in 290-E, it specified the types of property that can be acquired, including the types of interest in land, and it can be added. The current draft states open space or other purposes which simplifies it. Mrs. Zukowski stated that the difference is that it limits it. It says this is what we expect and only what we expect. By saying other purposes, you are changing the content of charter. Mr. Hall stated that they do not have the power to do anything they want to do; they need to follow the CT general statutes.

What takes precedence, the charter or the general statutes? There are some statutes that mandate things and takes precedence, and there are other statutes that authorizes things and that allows the charter to take precedence.

Responsibilities of the LC and BOS are not clearly delineated as who is the town. Draft language states the town shall have all powers set forth and methods of acquisitions. Current charter language states that the BOS only has the power to accept and approve infrastructure layouts for public good. The LC is responsible to accepting all other properties.

The reason why it is important to determine what the authority is for the acquisition of property is because it is being treated differently than the disposition of property. Mrs.

Zukowski's idea is to have the document written that makes sense for a layperson. A suggestion was made to put all of the different types of land acquisitions in one place and then you can differentiate from there in terms of the sale. A cross reference will go in the area that it was in. That is where the money is.

The town has powers, the intention is to include all manner as to which the town acquires the property. Individual bodies have different responsibilities in the acquisition. Right now, our charter very clearly delineates the rolls of the individual bodies. We don't want to change things by omission. The Legislative Council may authorize the purchase or acquisition of real property. The only property that the BOS can accept is listed in 330-A6.

The question arose of open space disposition. Right now there is nothing in the charter about it in terms about buildable parcels, there is nothing in the charge and there was nothing in the interviews with George Benson, Rob Sibley or Dave Grogins. Mr. Hall replied that there are pieces of open space that were acquired years ago and have no function. The town may in fact benefit from selling them. If the feeling is, they are sacred and cannot be sold, that is fine. But by putting it in at least to get some comment on it outside this group.

Mrs. Zukowski articulated that there are two overriding themes in the current charter, reduce the opportunity for government graft and the second is basically saying that our government officials shouldn't be able to spend our money willy nilly.

Mrs. Zukowski asked the commission to read the gap analysis that she produced. Come back and say, do we want to make those levels of changes. And if we do change anything, we need to be upfront of what changes were made. The LC has to have a full listing of every possible change that they have made for them to be able to vote on it. Every change of content needs to be identified.

Mr. Capeci explained that this is a complex piece of the charter and it is going to take some work. Taking this offline with a subcommittee and hammer the changes out and reconcile the two documents before the next meeting.

Mr. Capeci asked if members are close to agreement with the proposed draft or if they want a rewrite. Mr. Capeci said he is not at the point to make the decision. There are things in there that could add value to the language to what we have. Mr. Long is close to what Mr. Hall has but hasn't had a chance to go through the gap analyses. Mr. Hall will agree to the cross reference to the BOS powers under 330-A6 should be cross referenced and can cross reference the other way and can take out some of other language on A, acquisition, and thin that down and make a cross reference the other way to P&Z.

Mrs. Zukowski would like to rewrite the existing 7-90 with language for the lay people. Where the levels of details need to be is where there is money involved.

Reorganization of the Charter – Mr. Burns explained that they presented a table of contents at the last meeting and wanted input before they went much further. The current organization of the charter is on the current, not the abstract.

Charter Charger Items Categorized under Board Composition – They divided up all the boards and commissions that appear on the town website. They defined them as to which were in the charter and which were not and which ones have ordinance have associated with them. And came up with criteria for why they should be in the charter and why they shouldn't. And they looked at what types of information needed to be in the charter.

VOTER COMMENT - NONE

ANNOUNCEMENTS – NONE

Having no further business, the meeting was adjourned at 10:13pm

Respectfully Submitted,
Ariene Miles, Clerk

7-90 ACQUISITION OR DISPOSITION OF REAL PROPERTY

METHODS OF ACQUISITION OF REAL PROPERTY

The Town shall have all the powers set forth in the Connecticut General Statutes to acquire real property and any interest in real property. These powers include acquisition of:

A. Real property, easements and any other interests in land, required to be dedicated to the town for open space or other purposes by the planning and zoning commission in connection with approval of the subdivision of land;

B. Real property for non-payment of taxes, including by foreclosure, by summary foreclosure or by public sale by the tax collector which does not produce a bid in excess of the amount of tax, interest and fees due and owing on said parcel;

C. Real property, easements and any other interests in land by purchase from the owner or by gift by the owner; and

D. Real property or an interest in real property by exercise of the Town's power of eminent domain.

SALE OR DISPOSITION OF REAL PROPERTY ALREADY OWNED BY THE TOWN

The Town shall take the following steps in order to sell or otherwise dispose of real property, other than real property acquired for non-payment of taxes or for open space:

A. The First Selectman, with the approval of the Board of Selectmen shall have the right to propose the sale or other disposition of Town owned real property. The Legislative Council shall also have the right to propose sale or disposition of Town owned real property provided that said action is by a two-thirds vote of the entire membership of the Council. Before any further steps are taken or findings made by the Legislative Council, the Town shall have the property appraised by a licensed real property appraiser who shall submit the appraisal to the First Selectman in confidence.

B. If the First Selectman or the Legislative Council decide to continue the process after receiving the appraisal, the Legislative Council must find by a two-thirds vote that (A) the real property in question is excess land not needed for municipal purposes now or in the foreseeable future, or (B) the sale or disposition of the Town owned real property is for the purpose of facilitating acquisition of improved or unimproved land for a project already funded which is more suited to accomplishing said project than the real property already owned. Prior to making either finding the Legislative council shall circulate the proposal for comment to all boards and commissions having an interest in the real property in question, at a minimum the planning and zoning commission, the parks and recreation commission, the conservation commission and the economic development commission, and shall hold a public hearing --**[I would propose a public notice section of the charter to which cross references may be made--“noticed in accordance with section ____” but in the absence of such a cross reference]**-- notice of which shall be given by posting a notice in the town clerk’s office and on the town website at least 15 days prior to the date of the public hearing, and by publication in a newspaper having a substantial circulation within the Town twice, the first not more than 15 nor less than 10 days prior to the date of the public hearing, and the second not less than 2 days prior to the hearing.

C. If the disposition of a parcel of real property is in connection with a proposal to acquire other improved or unimproved land of equal or greater use for municipal purposes, and the real property already owned by the Town can be swapped for some or all of the land which the Town seeks to acquire, the value of the real property being swapped shall be considered as an in-kind payment for which an appropriation is required.

D. If the Legislative Council finds that the real property is excess and not needed for town purposes, or that the sale or disposition will facilitate acquisition of land of greater use, the First Selectman shall refer the proposed sale or other disposition to the planning and zoning commission under the “mandatory referral” (Sec. 8-24 CGS) requirement of the CGS;

E. Following action by the planning and zoning commission on the mandatory referral, the Legislative Council must vote to sell or otherwise dispose of said real property by the requisite number of votes, with or without conditions, and if it so votes the First Selectman is authorized to take all steps necessary to sell or otherwise dispose of said real property subject to said conditions, if any in accordance with the procedure set forth herein.

SALE OF REAL PROPERTY ACQUIRED FOR NON-PAYMENT OF TAXES

A. After title to real property has been acquired by the Town for non-payment of taxes and all periods for redemption have expired, said real property shall be sold unless, within 90 days of title becoming absolute in the Town, the Legislative Council shall find by a two thirds vote of its entire membership that said real property should be retained for a specific town purpose. Prior to making said finding the council shall refer the proposed retention of title to the planning and zoning commission as a mandatory referral pursuant to Sec. 8-24 CGS.

B. In the absence of a finding that the real property should be retained for a specific town purpose the First Selectman shall take all steps necessary to sell or otherwise dispose of said real property in accordance with the procedure set forth herein.

SALE OR DISPOSITION OF REAL PROPERTY CONSTITUTING OPEN SPACE

A. Conditions Precedent. Circumstances may be found to exist where real property originally acquired as open space in connection with approval of a subdivision by the P&Z no longer has value for purposes of open space. It shall be presumed for purposes of this section of the Charter that at least ten years must have passed since the subdivision map was filed in the town clerks office before it could be found that said open space land no longer has value for purposes of open space, and that where said open space land, or said land in conjunction with other contiguous open space land, exceeds five acres there is open space value regardless of how much time has passed since the subdivision map was filed in the town clerk's office.

B. The Town shall make and keep an inventory of all open space land which has been held as open space for at least ten years which is, or is part of a larger piece which is, less than five acres in size, and said inventory shall be available for public inspection at the office of the First Selectman and at the land use department.

C. If a person offers to purchase a parcel of land on the inventory of less than five acre open space, or offers to swap other land to compensate for the loss of open space with or without further consideration, the First Selectman shall obtain an appraisal of the open space to be sold or swapped made by a licensed real property appraiser who shall submit the appraisal to the First Selectman in confidence. The terms of the proposed purchase or swap shall be circulated for comment to all boards and commissions having a interest in the real property in question, at a minimum the board of selectman, the planning and zoning commission, the parks and recreation commission, the conservation commission and the economic development commission, and a public hearing shall be referred to the planning and zoning commission as a mandatory referral pursuant to Sec. 8-24 Connecticut General Statutes. Subsequent to a response from the P&Z or the expiration of the time within which a response is required without a response, the Legislative Council must find by a two-thirds vote of the entire membership that said land no longer has value as open space. If the Legislative council so votes the sale shall be conducted under the same procedure as provided for land already owned by the Town.

- a) ~~The First Selectman with the approval of the Board of Selectmen and with the approval of the Legislative Council may discontinue any highway and no Town meeting shall be required for such discontinuance. —~~
- b) ~~The Legislative Council, subject to there being appropriations for the specific purpose in the annual budget or by a special appropriation pursuant to Section 7-80 (a) of this Charter, may authorize the purchase or acquisition, including without limitation the acceptance of gifts, with or without conditions, of real property or interests in real property for all Town purposes other than those described in subsection 3-30 (a) (6) of this Charter, the acquisition for nonpayment of taxes described in subsection (c) of this section and open space, parks and playgrounds recommended for acceptance by the Planning and Zoning Commission but not within its power to accept by the provisions of subsection (e) of Section 2-90 of this Charter. Following a decision by the Legislative Council to acquire such real property or an interest in real property, the Board of Selectmen shall authorize an officer, board or commission to act on behalf of the Town in such acquisition. —~~
- c) ~~Following the acquisition of real estate by the Town as a result of non-payment of taxes, the Legislative Council may, for a period of 90 days thereafter, vote to reserve said property for Town purposes, provided that if the amount of the tax, interest, lien, fees and other costs exceed \$50,000, the Legislative Council may recommend such reservation to a Town Meeting, which shall then have the power to act on such reservation for said 90 day period. —~~

~~d) All sales of real property acquired for non-payment of taxes and not reserved for Town use within 90 days as set forth in subsection (c) of this section shall be sold either at public auction or by sealed bid as determined by the Tax Collector. A permanent record of each transaction involving property so acquired shall be maintained by the Tax Collector in accordance with the provisions of the General Statutes. —~~

~~e) The sale, abandonment, lease or other disposition of Town-owned real property or interests in real property shall require the approval of a Town Meeting but such approval may be made only by the Town Meeting following a recommendation of such sale, abandonment, lease or disposition by the Legislative Council. Following such approval, the First Selectman shall carry out such sale, abandonment, lease or other disposition, subject to the requirements of subsections (f) to (h), inclusive, of this section. —~~

~~f) All sales, leases or other disposition of real property or interests in real property authorized in accordance with subsection (e) of this section, shall be by sealed bid unless the Board of Selectmen directs that a particular sale be by public auction. If the authorization of the Town Meeting is contingent upon obtaining a particular price, no bid less than the amount approved by the Town Meeting may be accepted. —~~

PROCEDURE FOR SALE OF REAL PROPERTY

A. The First Selectman, with the approval of the Board of Selectman, shall determine whether sale by public auction or private sale is in the best interest of the Town. — ~~A. All sales, leases or other dispositions of real property or interests in real property conducted by sealed bid or public auction, whether of property acquired for taxes or otherwise, shall be conducted in accordance with the following procedure:~~

B. If the decision is to sell the real property at public acution, nNotice of such sale, including the terms thereof, shall be advertised in a newspaper having a substantial circulation in Newtown and the surrounding area at least twice, with the first such notice **not less than 14 at least 30** days prior to the date sealed bids are due or the auction is to be held.

1. The successful bidder at the auction shall submit a deposit of ten percent of the successful bid immediately after the auction is ended, with the balance due within 30 days of the close of the auction, which date may be extended for up to an additional 30 days by the Board of Selectmen if it finds there are extenuating circumstances. ~~All bids shall be accompanied by a deposit of 10% of the amount of the bid in cash, certified or bank check except that at sales by auction such deposit shall only be required of the successful bidder at the time his bid is accepted. In the event that the bidder who is accepted, following submission of sealed bids or at public auction, does not tender the balance of his/her bid within 30 days after the acceptance of his/her bid, the amount so deposited by him/her shall be retained by the Town as liquidated~~

~~damages and the Town shall forthwith be free to re-advertise and resell said property pursuant to procedures set forth herein, without further obligation to the original successful bidder. The Board of Selectmen may extend the 30 day period for 60 additional days if it finds that such default by the acceptable bidder has occurred through no fault of said bidder. If the successful bidder at auction is unable to make such 10% deposit immediately upon acceptance of his bid, the property shall be forthwith re-auctioned until the sale can be completed in the manner prescribed herein, with such previous said bidder or and his/her agent shall be disqualified from future bidding at any re-auction of said real property anything less than his/her first successful bid. If said deposit is made but the successful bidder does not close within said time limits for any reason, time being of the essence, said deposit shall be retained by the Town as liquidated damages, and the Town shall be free to start the sale process again.~~

2. All other terms under which the sale is conducted shall be determined by the First Selectman with the concurrence of the auctioneer.

C. ~~If the decision is made to sell the real property by private sale the price and terms of the contract of sale, subject to the terms of this paragraph, shall be established by the First Selectman with the approval of the Board of Selectmen and confirmed Where the First Selectman with the approval of the Board of Selectmen finds following Town Meeting approval of sale, lease or other disposition of real property or interest therein that it is in the best interest of the Town to conduct a private sale rather than a sealed bid or auction, it may authorize the sale, lease or other disposition of such real property or interest therein by private sale after reasonable notice of such proposed action, subject to approval by affirmative vote of two-thirds of the entire authorized membership of the Legislative Council. Said notice shall be published in a newspaper having substantial circulation in the Town at least twice and shall describe the property or the interest therein being sold or leased and shall contain the price of the proposed private sale. It shall be a condition of any such proposed private sale that if a higher offer or offers are received from responsible offerors during the 10 days following publication of the first legal notice, that said private sale shall not be consummated and such property shall be sold to the highest such responsible offeror subject to further publication, the 10 day waiting period and the receipt of even higher offers, and provided, prior to starting the publication process over again, the offeror, whose offer is then being accepted, shall pay all costs of the Town incurred in connection with such sale. Publication shall occur within 10 days of the expiration of the original 10 day period. The foregoing publication procedure and 10 day waiting period shall be followed for each subsequent offer accepted by the Town.~~ Any such contract of sale shall contain a provision to the effect that if the buyer fails to close on the date set for closing in the contract (or as extended by agreement between the Town and the buyer) the Legislative Council may declare the contract terminated if not closed by a date certain, not more than 14 days from the date of the vote, time being of the essence. If the buyer fails to close by said "time of the essence" date the buyer shall be in breach of the contract and any deposit held by the town shall be retained by the Town as liquidated damages.

ATTACHMENT 1

1 Introduction

Content about acquisition of real property and related processes can be found in paragraphs 2-90e, 3-30a2, 3-30a6, 6-100a, 7-90b, 7-90c, and 7-100a. While the discussion may be currently spread among five sections (with reference made to other sections), it may make sense to bring all of this together on one section so that all responsibilities and processes relating to property acquisition can be more easily found, though still referencing sections that are not explicitly about property.

Also, we have been requested to review the charter based on charge items. Those relevant to section 7-90 include:

7-90	As we look to return nonperforming commercial and industrial properties to the tax rolls, it would be wise for the town to have a clear and concise manner for the disposition of properties taken by foreclosure or other means.	EDC
7-90D	Eliminate sealed bid, public auction..see Ridgefield charter page 9, section 3-9	BOS and EDC

We’ve also heard from Land Use (Sept 9) and the Town Attorney regarding property disposition (Sept 30).

This document looks at all content about property acquisition and disposition in the original charter and compares it to the proposed replacement of section 7-90. Two Appendices are provided: one including relevant state statutes mentioned in the proposal and others that I was able to find, and the other containing my notes from our discussions with George Benson, Rob Sibley, and David Grogins.

2 Acquisition

2.1 Summary of original

2.1.1 Body responsible for accepting property

Planning and Zoning: Paragraph 2-90e specifies the type of acquisition, *“all open spaces, parks, playgrounds, real property for the purpose of widening or realignment of existing public highways and drainage, slope or similar easements.”* In addition, it empowers the P&Z to accept the real property *“on behalf of the town”* provided that its title is *“free and clear of all encumbrances and is conveyed by warranty deed.”* Should the title not meet these requirements, the Legislative Council¹ is the body that decides whether or not to accept the property (paragraph 7-90b).

Board of Selectmen: The BoS has the power to accept and approve infrastructure layouts for the public good (paragraph 3-30a6) that, from how I read it, are not part of subdivision approval – see foot note 1. The BoS is also responsible for authorizing an agent for the town to undertake the mechanics of acquiring any and all property that the LC has accepted (paragraph 7-90b).

¹ Note that 2-90e says that the power to accept properties with encumbered titles vests with either the LC or the BoS. However, 7-90b specifically calls out such property and refers only to the LC. The properties referred to in section 3-30a6 are “excepted” from 7-90b.

Legislative Council: The Legislative Council seems to be the body responsible for accepting all other properties (paragraph 7-90b), provided that the money has already been budgeted or that it is not more than \$500,000 and does not push overall special/emergency appropriations above 1 mil of the most recent grand list (paragraph 7-80a). There is no requirement for a 2/3 majority in paragraph 7-90b, nor in special appropriations² (7-80a). Note that paragraph 3-30a2 appears to provide broad powers to the BoS, re: property acquisition and disposition, but those powers are subject to section 7-90. 3-30a2 refers to both real and personal property.

Town Meeting: The LC may recommend that a Town Meeting decide: 1) if property acquired because of non-payment of taxes should be reserved for town use, when the encumbrances on the property exceed \$50,000 (paragraph 7-90c) or 2) when the appropriation needed to purchase the property above \$500,000 and below \$10,000,000 (paragraph 6-30c).

Referendum: The LC must recommend a referendum should the property equal or exceed \$10 million (paragraph 6-30c). In addition, should voters successfully petition for a referendum, then the referendum will be the deciding body (7-100a).

2.1.2 Processes

Property Accepted by P&Z: From paragraph 2-90e.

"Acceptance by the Commission shall not occur until the final subdivision map approved by the Commission has been filed with the Town Clerk. The Commission's approval is not subject to further appeal under Connecticut law."

Impact statements: From paragraph 6-100a

"[N]o gift of real or tangible personal property shall be accepted until the Board of Finance and Legislative Council have received said financial impact statement."

Accepting property acquired via non-payment of taxes for town use: Paragraph 7-90c.

"Following the acquisition of real estate by the Town as a result of non-payment of taxes, the Legislative Council may, for a period of 90 days thereafter, vote to reserve said property for Town purposes, provided that if the amount of the tax, interest, lien, fees and other costs exceed \$50,000, the Legislative Council may recommend such reservation to a Town Meeting, which shall then have the power to act on such reservation for said 90 day period."

2.2 Proposed Wording

METHODS OF ACQUISITION OF REAL PROPERTY

The Town shall have all the powers set forth in the Connecticut General Statutes to acquire real property and any interest in real property. These powers include acquisition of:

A. Real property, easements and any other interests in land, required to be dedicated to the town for open space or other purposes by the planning and zoning commission in connection with approval of the subdivision of land;

² There is a 2/3 vote needed to verify that a situation qualifies as an emergency (paragraph 6-30a).

B. Real property for non-payment of taxes, including by foreclosure, by summary foreclosure or by public sale by the tax collector which does not produce a bid in excess of the amount of tax, interest and fees due and owing on said parcel;

C. Real property, easements and any other interests in land by purchase from the owner or by gift by the owner; and

D. Real property or an interest in real property by exercise of the Town's power of eminent domain.

Note that process outlining how to decide if property acquired via non-payment of taxes should be reserved for town use is found in the SALE OF REAL PROPERTY ACQUIRED FOR NON-PAYMENT OF TAXES.]

A. After title to real property has been acquired by the Town for non-payment of taxes and all periods for redemption have expired, said real property shall be sold unless, within 90 days of title becoming absolute in the Town, the Legislative Council shall find by a two thirds vote of its entire membership that said real property should be retained for a specific town purpose. Prior to making said finding the council shall refer the proposed retention of title to the planning and zoning commission as a mandatory referral pursuant to Sec. 8-24 CGS.

2.3 Differences

1. The first sentence of the proposal refers to the CT General Statutes (CGS). The original did not have such a reference. Was this added to more explicitly clarify that state statutes that impact the process? If so, are we assuming that those interested in understanding our charter are willing and able to read the appropriate sections of the CGS? Will they know which sections to read? Would it make sense to refer to the CT General Statutes in the intro, and for each section explicitly call out the ones that apply?
2. Bullet A is missing the delineation of types of properties that the P&Z can require as well as the restriction on deeds and the process the commission has to follow to accept the property. Is the assumption that such details will be in the Membership, Rules, and Duties section?
3. The responsibilities of the LC and BoS are not clearly delineated. Who is "The Town"?
4. The proposal does not explicitly refer to special appropriations section 7-80a as does the original. The wording does not include language like "special appropriations" that would indicate to readers that other sections were in force.
5. The language for property acquired for non-payment of taxes is notably different.
 - a) It enumerates methods of how such property is acquired, including public sale by tax collector. Would we really sell a property for taxes, etc., even if the market value far exceeded that? Note that paragraph 7-90d says the tax collector would sell unwanted property by public auction or sealed bid.
 - b) The restriction based on encumbrance level of \$50,000 is missing.
 - c) 2/3 vote of the LC is required in the proposal to retain such property for town purposes. The original has no such requirement.
 - d) The CGS 8-24 was added as mandatory. This statute seems to cover every type of property acquisition, including land for infrastructure, donated parks, etc. Note that the P&Z would get 35 days to approve/disapprove it. Would this 35 days be part of the 90 days for the LC decision? More generally, do we abide by this statute across the board

or does the language in our current charter supersede it for all or some types of property acquisition?

6. As far as I can tell, the original charter does not have anything related to Bullet D, re: eminent domain.
7. Content from paragraph 3-30a6, regarding the BoS powers to accept land for infrastructure that serves the public good is not included.
8. Both 3-30a2 and 6-100a include reference to personal property. Should we call this out?
9. Also, I'd recommend that we include the need for impact statements here, as it is a key step in the process of accepting property.

3 Decision Criteria to Sell/Dispose Town-Owned Property

3.1 Summary of original

Highways: First Selectman proposes to discontinue these, BoS and LC must approve via standard voting practices. *[DJZ: LC – 7 or majority of those present?? Also, what happens to the land? Is it considered just another town-owned parcel after discontinuation?]*

Sale, abandonment, lease, or other disposition of Town-owned property or interests in real property: LC must first recommend such action. Then, approval must be gained via Town Meeting. If so approved, the First Selectman is responsible for initiating the process, as approved.

Sale of real property acquired due to non-payment of taxes that was not deemed of use to the town: Once the LC/TownMeeting deems that the property is of no use to the town, the Tax collector is responsible for selling the property (method is provided in section 4.1).

3.2 Proposed Wording

SALE OR DISPOSITION OF REAL PROPERTY ALREADY OWNED BY THE TOWN

The Town shall take the following steps in order to sell or otherwise dispose of real property, other than real property acquired for non-payment of taxes or for open space:

A. The First Selectman, with the approval of the Board of Selectmen shall have the right to propose the sale or other disposition of Town owned real property. The Legislative Council shall also have the right to propose sale or disposition of Town owned real property provided that said action is by a two-thirds vote of the entire membership of the Council. Before any further steps are taken or findings made by the Legislative Council, the Town shall have the property appraised by a licensed real property appraiser who shall submit the appraisal to the First Selectman in confidence.

B. If the First Selectman or the Legislative Council decide to continue the process after receiving the appraisal, the Legislative Council must find by a two-thirds vote that (A) the real property in question is excess land not needed for municipal purposes now or in the foreseeable future, or (B) the sale or disposition of the Town owned real property is for the purpose of facilitating acquisition of improved or unimproved land for a project already funded which is more suited to accomplishing said project than the real property already owned. Prior to making either finding the Legislative council shall circulate the proposal for comment to all boards and commissions having an interest in the real property in question, at a minimum the planning and zoning commission, the parks and recreation commission, the

conservation commission and the economic development commission, and shall hold a public hearing - ~~-[I would propose a public notice section of the charter to which cross references may be made--~~ ~~“noticed in accordance with section ____” but in the absence of such a cross reference]~~-- notice of which shall be given by posting a notice in the town clerk’s office and on the town website at least 15 days prior to the date of the public hearing, and by publication in a newspaper having a substantial circulation within the Town twice, the first not more than 15 nor less than 10 days prior to the date of the public hearing, and the second not less than 2 days prior to the hearing.

C. If the disposition of a parcel of real property is in connection with a proposal to acquire other improved or unimproved land of equal or greater use for municipal purposes, and the real property already owned by the Town can be swapped for some or all of the land which the Town seeks to acquire, the value of the real property being swapped shall be considered as an in-kind payment for which an appropriation is required.

D. If the Legislative Council finds that the real property is excess and not needed for town purposes, or that the sale or disposition will facilitate acquisition of land of greater use, the First Selectman shall refer the proposed sale or other disposition to the planning and zoning commission under the “mandatory referral” (Sec. 8-24 CGS) requirement of the CGS;

E. Following action by the planning and zoning commission on the mandatory referral, the Legislative Council must vote to sell or otherwise dispose of said real property by the requisite number of votes, with or without conditions, and if it so votes the First Selectman is authorized to take all steps necessary to sell or otherwise dispose of said real property subject to said conditions, if any in accordance with the procedure set forth herein.

SALE OF REAL PROPERTY ACQUIRED FOR NON-PAYMENT OF TAXES

A. After title to real property has been acquired by the Town for non-payment of taxes and all periods for redemption have expired, said real property shall be sold unless, within 90 days of title becoming absolute in the Town, the Legislative Council shall find by a two thirds vote of its entire membership that said real property should be retained for a specific town purpose. Prior to making said finding the council shall refer the proposed retention of title to the planning and zoning commission as a mandatory referral pursuant to Sec. 8-24 CGS.

B. In the absence of a finding that the real property should be retained for a specific town purpose the First Selectman shall take all steps necessary to sell or otherwise dispose of said real property in accordance with the procedure set forth herein.

SALE OR DISPOSITION OF REAL PROPERTY CONSTITUTING OPEN SPACE

A. Conditions Precedent. Circumstances may be found to exist where real property originally acquired as open space in connection with approval of a subdivision by the P&Z no longer has value for purposes of open space. It shall be presumed for purposes of this section of the Charter that at least ten years must have passed since the subdivision map was filed in the town clerk’s office before it could be found that said open space land no longer has value for purposes of open space, and that where said open space land, or said land in conjunction with other contiguous open space land, exceeds five acres

there is open space value regardless of how much time has passed since the subdivision map was filed in the town clerk's office.

B. The Town shall make and keep an inventory of all open space land which has been held as open space for at least ten years which is, or is part of a larger piece which is, less than five acres in size, and said inventory shall be available for public inspection at the office of the First Selectman and at the land use department.

C. If a person offers to purchase a parcel of land on the inventory of less than five acre open space, or offers to swap other land to compensate for the loss of open space with or without further consideration, the First Selectman shall obtain an appraisal of the open space to be sold or swapped made by a licensed real property appraiser who shall submit the appraisal to the First Selectman in confidence. The terms of the proposed purchase or swap shall be circulated for comment to all boards and commissions having an interest in the real property in question, at a minimum the board of selectman, the planning and zoning commission, the parks and recreation commission, the conservation commission and the economic development commission, and a public hearing shall be referred to the planning and zoning commission as a mandatory referral pursuant to Sec. 8-24 Connecticut General Statutes. Subsequent to a response from the P&Z or the expiration of the time within which a response is required without a response, the Legislative Council must find by a two-thirds vote of the entire membership that said land no longer has value as open space. If the Legislative council so votes the sale shall be conducted under the same procedure as provided for land already owned by the Town.

3.3 Differences

SALE OR DISPOSITION OF REAL PROPERTY ALREADY OWNED BY THE TOWN

1. Title (et. al.) the words 'lease' and 'abandonment' have been removed.
2. The first sentence in the proposed "SALE OR DISPOSITION OF REAL PROPERTY ALREADY OWNED BY THE TOWN" is ambiguous. Reading it strictly, the phrase "other than real property acquired for non-payment of taxes" would mean whether or not such property had been deemed useful to the town. In the original, my read is that such property – when deemed usable for the public – becomes the same as other town-owned property.
3. The phrase "or interests in real property" is missing in these proposed sections.
4. Regarding what body is allowed to propose selling town-owned, the original restricts the First Selectman/BoS to highways. All other properties are subject to the recommendation of the LC. The proposed language in Bullet A does not reflect any restrictions.
5. LC proposals to sell property appear to be determined by a simple majority in the original, but the proposal requires a 2/3 majority in Bullet B.
6. There have been more criteria added to the initial decision process in Bullet B, specifically:
 - a. A secret appraisal must be sought and received by the First Selectman. *[DJZ: We had discussions on getting an appraisal – still don't understand why it needs to be secret.]*
 - b. The LC, after the First Selectman gets the appraisal, must circulate the proposal to commissions with interests for comments, and must hold a public hearing. *[DJZ: I believe including commissions was added on 10/7]*

- c. The LC must vote based on “(A) the real property in question is excess land not needed for municipal purposes now or in the foreseeable future, or (B) the sale or disposition of the Town owned real property is for the purpose of facilitating acquisition of improved or unimproved land for a project already funded which is more suited to accomplishing said project than the real property already owned.” And, the vote must be 2/3 of the members (assuming of total membership).
7. Bullet C seems to have been added based on comments from Land Use representatives on Sept 9 (see notes in Appendix B). However, they were talking about lot-line revisions, not swaps of buildable parcels.
8. Bullet D explicitly calls out roll for P&Z (Sec. 8-24 CGS). This roll does not appear in original charter. As before, was it implicitly there?
9. The ultimate approval of the Town Meeting has been replaced, in Bullet E, with a public hearing (5b) and with a 2/3 vote of the LC (5c). [DJZ: Not sure if the vote mentioned in Bullet B is the same vote as mentioned in Bullet E. Is so, “requisite number of votes” is 2/3 (assuming of entire membership). If not, the phrase is undefined.

SALE OF REAL PROPERTY ACQUIRED FOR NON-PAYMENT OF TAXES

Note that this section includes language about acquisition as well as disposition.

1. In original, responsible party was noted as Tax Collector. In proposed language, responsible party is noted as First Selectman.

SALE OR DISPOSITION OF REAL PROPERTY CONSTITUTING OPEN SPACE

1. There is no mention of open space in the original charter, nor in the charge items provided by LC. However, it did come up as part of the discussion with Land Use reps on Sept 29, re: lot-line revisions (for very small pieces < 0.5 acre). In addition, when asked, D Grogins answered on Sept 30, that it might make sense for the town to use small parcels to barter for more important property.
2. Not clear that the restriction of open space acquired via subdivision requirements is needed.
3. The section reads more like someone wants to purchase the property for development, rather than the town bartering for more important property. Note that much of the open space associated with subdivisions is/was residentially zoned, so supporting commercial development is not likely. Also, P&Z, conservation commission are supporting the use of open space for protecting habitats as well as passive recreation. In my opinion, before we do anything about open space, we need to talk with them.

4 Process to Dispose of Town-Owned Property

4.1 Summary of original

Sale of real property other than that acquired due to non-payment of taxes that was not deemed of use to the town: In general the sale, lease, or other disposition all property previously considered of use to the town must be done via sealed bids unless the First Selectman feels a public auction is more appropriate. Note that minimum amounts, as specified in the Town Meeting, can be set.

Sale of real property acquired due to non-payment of taxes that was not deemed of use to the town:

Once the LC/TownMeeting deems that the property is of no use to the town, the Tax collector determines whether to use Sealed Bid or Public Auction to sell the property (7-90d). The Tax Collector is required to keep a permanent record of each transaction as required by the CT General Statutes.

For sealed bids and public auctions, all sales, leases, etc. follow a set process regardless of how the property was acquired: Notice provided with first being not less than 14 days (7-90g1). Monetary requirements for bidders provided (7-90g2).

Private Sale Option: The First Selectmen can propose that property to be sold, leased, or otherwise disposed should be done via private sale. To do so, the LC must support this proposal by a 2/3 vote of the "entire authorized membership." "Reasonable" public notice must be given that includes the price of the proposed sale. Should the town receive a higher bid, then the higher bidder becomes the proposed buyer, and the public notice happens all over again.

4.2 Proposed Wording

PROCEDURE FOR SALE OF REAL PROPERTY

A. The First Selectman, with the approval of the Board of Selectman, shall determine whether sale by public auction or private sale is in the best interest of the Town.

B. If the decision is to sell the real property at public auction, notice of such sale, including the terms thereof, shall be advertised in a newspaper having a substantial circulation in Newtown and the surrounding area at least twice, with the first such notice at least 30 days prior to the date the auction is to be held.

1. The successful bidder at the auction shall submit a deposit of ten percent of the successful bid immediately after the auction is ended, with the balance due within 30 days of the close of the auction, which date may be extended for up to an additional 30 days by the Board of Selectmen if it finds there are extenuating circumstances. If the successful bidder at auction is unable to make such 10% deposit immediately upon acceptance of his bid, said bidder and his/her agent shall be disqualified from future bidding at any re-auction of said real property. If said deposit is made but the successful bidder does not close within said time limits for any reason, time being of the essence, said deposit shall be retained by the Town as liquidated damages, and the Town shall be free to start the sale process again.

2. All other terms under which the sale is conducted shall be determined by the First Selectman with the concurrence of the auctioneer.

C. If the decision is made to sell the real property by private sale the price and terms of the contract of sale, subject to the terms of this paragraph, shall be established by the First Selectman with the approval of the Board of Selectmen and confirmed by affirmative vote of two-thirds of the entire authorized membership of the Legislative Council. Any such contract of sale shall contain a provision to the effect that if the buyer fails to close on the date set for closing in the contract (or as extended by agreement between the Town and the buyer) the Legislative Council may declare the contract terminated if not closed by a date certain, not more than 14 days from the date of the vote, time being of the essence. If the buyer fails to close by said "time of the essence" date the buyer shall be in breach of the contract and any deposit held by the town shall be retained by the Town as liquidated damages.

4.3 Differences

1. There are no sealed bids for anything now.
2. There is no process for lease, abandonment.
3. Public notice timing has changed from “not less than 14 days” to “at least 30 days” prior for public auction.
4. Should a bidder at public auction not provide the money in the time required, the original says “previous bidder or his/her agent disqualified from bidding anything less than his/her first successful bid” while the proposed language says “said bidder and his/her agent shall be disqualified from future bidding at any re-auction of said real property.”
5. In the original, the Town Meeting sets terms for sale. In the proposed language, the First Selectman does so.
6. Unlike the requirements for private sale in the original charter, the proposed paragraph for private sale (Bullet C) does not require public notice nor does it provide for others to outbid the original buyer.

Appendix A: Connecticut General Statutes Relevant to Property

Sec. 8-24. Municipal improvements. No municipal agency or legislative body shall (1) locate, accept, abandon, widen, narrow or extend any street, bridge, parkway or other public way, (2) locate, relocate, substantially improve, acquire land for, abandon, sell or lease any airport, park, playground, school or other municipally owned property or public building, (3) locate or extend any public housing, development, redevelopment or urban renewal project, or (4) locate or extend public utilities and terminals for water, sewerage, light, power, transit and other purposes, until the proposal to take such action has been referred to the commission for a report. Notwithstanding the provisions of this section, a municipality may take final action approving an appropriation for any proposal prior to the approval of the proposal by the commission pursuant to this section. The failure of the commission to report within thirty-five days after the date of official submission of the proposal to it for a report shall be taken as approval of the proposal. In the case of the disapproval of the proposal by the commission the reasons therefor shall be recorded and transmitted to the legislative body of the municipality. A proposal disapproved by the commission shall be adopted by the municipality or, in the case of disapproval of a proposal by the commission subsequent to final action by a municipality approving an appropriation for the proposal and the method of financing of such appropriation, such final action shall be effective, only after the subsequent approval of the proposal by (A) a two-thirds vote of the town council where one exists, or a majority vote of those present and voting in an annual or special town meeting, or (B) a two-thirds vote of the representative town meeting or city council or the warden and burgesses, as the case may be. The provisions of this section shall not apply to maintenance or repair of existing property, buildings or public ways, including, but not limited to, resurfacing of roads.

Sec. 7-163e. Public hearing on the sale, lease or transfer of real property owned by a municipality. (a) The legislative body of a municipality, or in any municipality where the legislative body is a town meeting or representative town meeting, the board of selectmen, shall conduct a public hearing on the sale, lease or transfer of real property owned by the municipality prior to final approval of such sale, lease or transfer. Notice of the hearing shall be published in a newspaper having a general circulation in such municipality where the real property that is the subject of the hearing is located at least twice, at intervals of not less than two days, the first not more than fifteen days or less than ten days and the last not less than two days before the date set for the hearing. The municipality shall also post a sign conspicuously on the real property that is the subject of the public hearing. (b) The provisions of subsection (a) of this section shall not apply to (1) sales of real property, except parkland, open space or playgrounds, if the fair market value of such property does not exceed ten thousand dollars, (2) renewals of leases where there is no change in use of the real property, and (3) the sale, lease or transfer of real property acquired by the municipality by foreclosure.

Sec. 7-148v. Requirements for competitive bidding. Notwithstanding the provisions of any municipal charter or any special act to the contrary, any municipality may, by ordinance, establish requirements for competitive bidding for the award of any contract or the purchase of any real or personal property by the municipality. Such ordinance may provide that, except as otherwise required by any provision of the general statutes, sealed bidding shall not be required for contracts or purchases having a value less than or equal to an amount established in the ordinance, which amount shall not be greater than seven thousand five hundred dollars. Nothing in this section shall be deemed to invalidate any ordinance enacted by a municipality prior to October 1, 1989. Nothing in this section and no ordinance adopted pursuant to this section shall be construed to limit the ability of a municipality to enter into a contract pursuant to section 4a-53a.

Appendix B DJZ notes from relevant meetings:

Sept 9, 2014

Land Use / EDC (George Benson, Rob Sibley, Jean – chair of EDC)

Typical process quite cumbersome. Typically through foreclosure process (liens, etc). Now are the holding entity for a lot of properties that are now considered to be a burden to town or a benefit to private party. Issues: health issues, erosion, water runoff issues, etc.

Town has not process for switching land that benefits both parties. If both parties were private, process is very simple. Can be problem for property owners if town land abuts their land. Flexibility of border not there. Likewise, town could benefit with lot-line revision if property owner wants to swap land with trail on it. Quickest was to get through process 2 months. Longest 9 years and counting.

Bob H: how many times does this happen. Ans: about 6 months ago, so 100 possible situations.

Deb: What size of land is involved in in these swaps. Open space threshold ~0.5 acre. Other town property couple hundred square feet.

Jeff: is there a municipality that does this well? Ans: We are on the leading edge.

Bob: Current process provide checks and balances to favored developer. No, this is lot line revision, not buildable lots.

Deb: cases where value of swaps is not equitable? Ans: It is sometimes in Town's best interest to unload the land. George: Also, what Town finds not important, private property owner finds very beneficial. Continual issue on shore line. Sometimes we don't get back what we give, but citizens are better off.

Jeff: Property disposition as it related to development, e.g., Fairfield Hills. Charter has problems re: supporting leases.

George: lived in a town that exempted itself from zoning regs. How much of the long drawn out process would evaporate if town did no. Ans: probably zero.

Sept 30, 2014

Land disposition:

Dave Grogins:

Town has acquired small lots, e.g., down near lake. Had to hold auction for which only the neighbor attended.

Most difficult: FFH. Could not go to sealed bid or public auction don't really fit. These two relate to financials being primary factor. For FFH, the function served by tenant is more important than monetary considerations. Solution was passage of special act of legislature – worked but more elaborate than really needed.

Has worked with other towns where procedures were much less elaborate. Understands need for such elaborate when some individuals took advantage on otherwise unknown knowledge.

E.g. Ridgefield – public notice of town meeting. Not necessary for all, though may make more sense for something of greater value. Ridgefield is selling large parcel, which did not go through Town Meeting. (Is this the one re: Senior housing that has been disputed?)

Bob: Charter has sections dealing with acquisition. What is opinion on whether town can sell open space acquired via sub-division?

Dave: Town can adopt ordinance to give control over to commission like conservation commission – which can then dispose of them as make sense. Feels that town should be able to use small parcels of open space to barter for other more important land. Dave is not sure whether Newtown gives control to conservation commission.

Bob: --- something about common law stuff

Deb: Other towns sans town meeting

Dave: only really work with towns with Town Meeting. Feels Town meetings are an anachronism.

Deb: Is this the property – controversial ? Property went to referendum. 11% came out to vote, passed by 6 votes.

Dan W.: Sealed bid to avoid sweetheart deals.

Dave: State statutes written to avoid this. Require public hearings prior to disposition

Kevin: Have you done anything via public auction

Dave: yes, but usually only one person shows up.

Kevin: Ridgefield does not have LC.

Dave: right, Ridgefield has 5 person BoS that performs that function.

Deb: If charter handles FFH property disposition, does that mean FHA Special Act null and void?

Dave: No, but then then there would be a question of whether the special act was needed.

Jeff: would Special act trump charter?

Dave: Only if there is direct conflict. Have to see what the language is. Talking home rule, lots of things could apply here.

[Deb - Seems like this could be a really tricky area.]

Bob: Thought home rule – allows us to amend/supersede special acts.

Dave: I think you might be right.

Bob: Categories of disposition seem to be based on how you acquire it, e.g., acquire via taxes – different processes for disposition. Does Ridgefield have such distinctions?

Dave: No.

George: Is there some procedure you could recommend that would simplify?

Dave: After public meeting, allow disposition of property by BoS/LC who decide how best to dispose. May have a Ceiling for this, higher value properties may head to referendum. Exempt leasing from bidding. Too many other provisions that are involved over and above square footage.

George: Are you saying BoS/LC would design and determine methods (e.g., public auction/sealed bid/private sale) to follow.

Dave: Majority of transactions can be done by private sales/RFP. Thinks the H provision works (sans Town Meeting). Thinks the rest of it is more elaborate than needed.

Jeff to get word document of charter

Bob will take a crack at rewriting 7-90. Some dispositions need not have such "rigamarole" and some that do. How acquired is part of it.

[Deb: hmmm, acquired via town meeting / bonding may play into this?]

Deb: wants something re: shedding light on how the decision was made re: first buyer.

George: Don't want to make it so complicated. Need something that keeps transparency, but don't want to have too many options.

Jeff: Don't want to scare off potential buyers because of elaborate scheme.

Jim: Could we also require posting on Town Website?

Jeff: Thinks there may have been state legislation on online notification.

Bob: Thinks that Newspapers are still the official notification.

Jeff: Thinks that there is some online posting is done now.

Jim: What can we do to increase the likelihood that folks will know about it? Many folks nowadays don't read newspapers.

???: Think about if town is motivated to get highest amount of money, why wouldn't the town do the standard sales method?

Bob: Charter, in that case, would mandate use of realtor if private sale.

???: use of value cap, perhaps.

Dan: may need to put it out because of the preferred type of development (vs. highest amount of money that could be gained.)

Jeff: Thinks Dave was saying leave flexibility for BoS to determine how to