

September 6, 2011

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Ms. Patricia Llodra
First Selectman
Newtown Municipal Center
3 Primrose Street
Newtown, CT 06470

Re: Recent Amendment to Fairfield Hills Ordinance

Dear Pat:

You have requested my response to a number of questions posed in a memo by William Furrier to you and Will Rodgers concerning the recent amendment to the Fairfield Hills Ordinance (Chapter 523 of the Newtown Ordinance Book) attached hereto. I have set forth my responses below:

1) Can the Legislative Council create or amend an ordinance that conflicts with any portion of the Newtown charter, other than with powers granted by special act or legislation?

I cannot answer this question in a meaningful way without a specific set of facts, or a specific ordinance referenced. An answer would depend upon the manner in which the ordinance purportedly "conflicts" with the Charter provision.

2) In creating or amending ordinances, other than with powers granted by special acts or other legislation by the Connecticut General Assembly, is the Legislative Council constrained to meet all the existing conditions and requirements or laws written into the Connecticut Constitution, Connecticut General Statutes and Special Acts and the Newtown Charter?

As with question no. 1, it is very difficult, without a specific ordinance in mind, to answer this question. A dissertation on the relationship among ordinances, constitutional provisions, statutes, special acts and charter provisions is well beyond the scope of this letter.

3) Did the enabling special legislation - Public Act 05-33 - limit Newtown's powers to create the FFHA ordinance to a time period that expired on or before Dec 31, 2005? ("Section I. (NEW) (Effective July 1, 2005) On or before December 31, 2005, any municipality ... may, by ordinance adopted by its legislative body, establish an authority...")

The answer is yes. The legislation was in fact created on July 6, 2005. See the Ordinance attached.

4) Do any of the powers that were granted to the town from special Public Act 05-33 remain in effect today?

All of the powers granted to the Town, except as noted in #3 above, remain in effect. Special Act 05-33 is an "enabling" legislative act and remains in effect until repealed; which it has not been. It is the basis under which powers granted in the ordinance remain in effect. As confirmation of this, Special Act 05-33 has now been codified as Section 7-163d of the Connecticut General Statutes.

5) When the Legislative Council amended the FFHA ordinance in July of 2011 to reference a portion of the town charter, did the Council possess powers through Public Act 05-33 that allowed it to amend the FFHA ordinance in conflict with any portion of the town charter?

The answer is yes. As long as the amendment does not conflict with the provisions of the Special Act (now statutory provision), which it does not, in my opinion, the amendment merely clarifies the extent of the powers granted to the "executive authority" by the ordinance, indicating when additional approvals are needed for leases undertaken by the Fairfield Hills Authority.

6) Considering the history of the debates leading to the passage of special Public Act 05-33; where Newtown officials petitioned the General Assembly to provide a temporary bridge of relief from our "cumbersome" charter for the purposes of closing pending lease deals that might be time sensitive; and considering that there was an expectation by the state that our town charter would be revised to incorporate changes created by the special act; and considering the General Assembly imposed a time limit to enact such ordinance that allowed Newtown to govern outside of the constraints of the town charter to pursue closure of time sensitive leases; and considering that the time sensitive pending lease deals never materialized and no longer exist; and considering that now the Legislative Council has amended the ordinance to include reference to complying with portions of the town charter; did the Legislative Council, by selectively inserting a portion of the town charter into the existing ordinance, also trigger the de facto requirement that all provisions of the town charter become applicable to FFH as well, per the requirements of the equal application of all provisions of the town charter, as required by Home Rule precedents that have been widely established?

In my opinion, since the Legislative Council has the authority to amend any ordinance, the amendment in question is legal and valid (so long as it does not violate Special Act 05-33) and does not nullify the authority granted under the Special Act or the original ordinance for the "executive authority" to approve Fairfield Hills' leases. I also do not agree with the statement that "Home Rule" requires a

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different conclusion.

7) Having now amended the FFHA ordinance to be inclusive of some conditions imposed by the town charter, should the approval of leases now require the fulfillment of the conditions of the special act - approval by executive body - and conditions of Sec. 7-90 of the town charter -- approval by town meeting to be called for by the Legislative Council?

No, as stated above, the amendment does not invalidate the original ordinance.

8) What language from what statute, special act or other legislation provides the Council the power to usurp the established charter revision process and amend the ordinance in a manner that retains conditions that conflict with the town charter? Why can the Legislative Council amend the FFHA ordinance with selective portions of the town charter while neglecting to apply the remaining portions of the charter?

PA 05-33, now Section 7-163d of the Connecticut General Statutes, grants the "authority" the power to "negotiate and enter into leases". The statute further provides for the creation of the "authority" by the adoption of an ordinance. The specific authority to "make, alter and repeal" ordinances is vested in the Legislative Council by Section 7-50 of the Town Charter. In the case of Verdermane v. West Haven Planning & Zoning Commission, et al, 1997 WL 150645 (Conn.Super.), decided in the Connecticut Superior Court on March 18, 1997, the court held that, "Legislative bodies routinely amend proposals before them. This power is obviously in the public interest. If legislative bodies have no authority to amend they will be compelled to accept imperfect proposals in imperfect form rather than correct and improve them." Therefore, as long as the original ordinance could have been adopted with the limitation provided for in the amended ordinance (which it could have), then the Legislative Council has the authority to amend the ordinance to add this limitation.

Very truly yours,



David L. Groghs

DLG/pld

Chapter 523

FAIRFIELD HILLS AUTHORITY

§ 523-1. Authority established.

§ 523-4. Jurisdiction.

§ 523-2. Membership; terms; vacancies.

§ 523-5. Powers and duties.

§ 523-3. Officers; quorum.

[HISTORY: Adopted by the Legislative Council of the Town of Newtown 7-6-2005. Amendments noted where applicable.]

§ 523-1. Authority established.

The Town of Newtown hereby establishes a municipal development agency pursuant to the provisions of Public Act 05-33 to be known as the "Fairfield Hills Authority" to implement the master plan for development of Fairfield Hills Campus adopted by the Newtown Planning and Zoning Commission on March 17, 2005, effective March 28, 2005, as from time to time amended.

§ 523-2. Membership; terms; vacancies.

The Authority shall consist of eight regular members appointed by the First Selectman of the Town of Newtown, with the approval of the Board of Selectmen. Each such member shall be an elector in the Town of Newtown. The terms of three of the initial appointees shall expire one year after the date of such appointment; the terms of three of the initial appointees shall expire two years after the date of such appointment; and the terms of two of the initial appointees shall expire three years after the date of such appointment. Thereafter, the term of each member shall be three years. Any vacancy on the Authority shall be filled immediately for the unexpired portion of the term by the First Selectman, with the approval of the Board of Selectmen. The provisions of the Charter of the Town of Newtown concerning minority representation shall apply to the membership of the Authority.

§ 523-3. Officers; quorum.

The members of the Authority shall be sworn to the faithful performance of their duties. At its first meeting, the members of the Authority shall select a Chairperson, a Vice-chairperson and a Clerk. The Clerk shall keep a record of the votes and other business of the Authority. The Chairperson shall preside at all meetings of the Authority. In the absence of the Chairperson, the Vice-chairperson will preside. At all meetings of the Authority, five members shall constitute a quorum for the transaction of business, which shall require a minimum of four affirmative votes for action.

§ 523-4. Jurisdiction.

The Authority shall exercise the powers granted to it by this chapter and in accordance with the master plan, with respect to the land generally known as the "Fairfield Hills Campus" (the "premises") and located primarily off Wasserman Way and Mile Hill South in the Town of Newtown and more particularly bounded and described as follows: a certain piece or parcel of land constituting approximately 185 acres, more or less, designated as "Parcel 5" on a certain map entitled "PERIMETER SURVEY & SUBDIVISION MAP, STATE OF CONNECTICUT DEPARTMENT OF PUBLIC WORKS, A-N CONSULTING ENGINEERS, INC. 505 WILLARD AVENUE NEWTOWN, CONNECTICUT, project FAIRFIELD HILLS HOSPITAL PROPERTY DISPOSITION MILE HILL RD., QUEEN ST. & MILE HILL SOUTH RD. NEWTOWN, CONNECTICUT," Project No. B1-A-335, date August 5, 1987, scale one inch equals 100 feet, drawing numbers 2 of 9, 3 of 9, 4 of 9 and 7 of 9, on file as map numbers 7663, 7664, 7665 and 7668 in the office of the Newtown Town Clerk.

§ 523-5. Powers and duties.

A. The Authority shall have the power to:

- (1) Implement the master plan for the development and operation of the premises, including, without limitation, the power to clear, to demolish, repair, rehabilitate, construct and insure real property in its possession;
- (2) Make site improvements essential to the preparation of land for its use in accordance with the provisions of the master plan;
- (3) Install, construct and reconstruct streets, utilities and other improvements necessary to carry out the master plan;
- (4) Negotiate leases for all or any part of the land and buildings of the premises, in the name of the Town of Newtown, in accordance with the provisions of the master plan, provided that any lease shall be subject to approval of the Board of Selectmen;
- (5) Employ a staff and fix their duties and retain by contract, or employ private contractors necessary to implement the master plan at the discretion of the First Selectman, Board of Selectmen or Purchasing Authority of the Town as those bodies deem appropriate; and
- (6) To the extent necessary, expend funds available to the Authority, at the discretion of the First Selectman, Board of Selectman or Purchasing Authority of the Town as deemed appropriate, to implement the master plan in accordance with the powers granted to the Authority.

B. The Authority shall meet monthly or as required. Within six months of its initial appointment, the Authority shall prepare and submit a schedule for reporting progress on the implementation of the master plan to the Board of Selectmen and the Legislative Council. Thereafter, the Authority shall report at least semiannually to the Board of Selectmen and the Legislative Council as to its progress in carrying out the provisions of the master plan.