



CITY OF STAMFORD, CONNECTICUT  
INTER-OFFICE CORRESPONDENCE

To: Dennis Mahoney, Chair  
Parks & Recreation Committee of the Board of Representatives

From: Kathryn Emmett, Director of Legal Affairs & Corporation Counsel  
Michael Toma, Assistant Corporation Counsel

Date: August 16, 2019

Re: Are leases of City property used for Park Purposes subject to the requirements of Section C6-120-3 of the Stamford Charter?

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We have been asked to provide the Board of Representatives Parks and Recreation Committee with a legal opinion concerning whether leases of City park land must be approved under Charter section C6-120-3. The text of this section follows:

Sec. C6-120-3. - To Restrict Disposition of Land Used for Park Purposes. No property consisting of more than 20,000 square feet owned by the City and used for park purposes may be sold or otherwise transferred except after approval for such sale or transfer by public referendum.

Property consisting of 20,000 square feet or less, owned by the City and used for park purposes may be sold or otherwise transferred after written approval of the Mayor, the Planning Board, the Board of Finance and by a two-thirds' vote of the entire membership of the Board of Representatives. No adjacent land can be similarly sold or otherwise transferred within fifteen years thereafter except by a vote of referendum as may be set forth in the General Statutes. If the City takes any land for highway or other purposes, which land was purchased for park or other recreational or open space purposes, or for which bonds were issued for such purposes, or which had been dedicated for such purposes, the City shall provide comparable replacement land at least equal in value and per unit area size to the value and per unit area size of the land taken, provided before such land is taken for highway or other purposes a public hearing shall be held in the manner provided by the General Statutes.

Specifically, we have been asked whether a lease of park land is considered a “transfer” of property under C6-120-3.

“In construing a city charter, the rules of statutory construction generally apply....” *Fennell v. City of Hartford*, 238 Conn. 809, 813 (1996), citing *Stamford Ridgeway Associates v. Board of Representatives*, 214 Conn. 407, 423 (1990).

Thus, “[w]hen construing a [charter], [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature.... In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply.... In seeking to determine that meaning, General Statutes § 1-2z<sup>1</sup> directs us first to consider the text of the [provision] itself and its relationship to other [provisions in the Charter]. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the [provision] shall not be considered.” *Considine v. City of Waterbury*, 279 Conn. 830, 836–37 (2006).

Under the principles of statutory construction, we need to look first to the words used in C6-120-3 and then to their relationship to other related provisions in the Charter in order to determine whether the reference to a “transfer” of property in C6-120-3 is intended to include a lease of property.

In addition, it is a well-established principle of statutory construction that, where there is a specific provision addressing the issue, the provision with the specific term will prevail over more general provisions.<sup>2</sup> In other words, here, where the Charter provides in specific terms for the procedure required to approve a lease, that provision – C1-50-3 – will control the leasing procedure over any other more general provision that does not in specific terms concern leasing such as C6-120-3.

C6-120-3 does not contain the word “lease.” However, as noted in a prior opinion of the Law Department concerning this issue,<sup>3</sup> the Charter does contain a separate provision, C1-50-3, which

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<sup>1</sup> § 1-2z. Plain meaning rule

The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

<sup>2</sup> “The provisions of one statute which specifically focus on a particular problem will always, in the absence of express contrary legislative intent, be held to prevail over provisions of a different statute more general in its coverage.” *Housatonic Railroad Co. v. Commissioner of Revenue Services*, 301 Conn. 268, 302 (2011).

<sup>3</sup> August 4, 2017 Opinion of Assistant Corporation Counsel Michael Toma, Re: Lease Between City of Stamford and Woodway Country Club.

specifically references leases and sets forth the procedure that must be followed to “lease” City property:

Sec. C1-50-3. - Disposition of Real Estate.

No purchase or lease of real estate by the City and no sale or lease of any real estate belonging to the City shall be valid unless approved by the Mayor, the Planning Board, the Board of Finance and the Board of Representatives. The Board of Representatives is authorized to enact ordinances governing the purchase, sale, lease or other disposition of such real estate.

Other provisions of the Charter which specifically reference leases are consistent with the conclusion that that the procedure to be followed for leases is found in C1-50-3. *See, e.g.*, C2-10-2 – Powers of the Board of Representatives (“The Board of Representatives shall have the following powers: . . . (10) To approve the purchase, sale or lease of real property.”); C6-30-13 – Procedure for Reviewing Public Works Proposals (“No action shall be taken by the City on any proposal involving the . . . sale or lease of . . . parks . . . until it has been referred to the Planning Board for a report.”).<sup>4</sup>

Similarly, the only Charter provision other than C6-120-3 which specifically refers to the transfer of real property, C8-60-9, contains the word “transfer” in the title and concerns only circumstances in which title to the real property is transferred. The word “transfer” is not used in the Charter to describe a lesser interest in real property such as a lease.<sup>5</sup> The other provisions in the Charter which specifically reference transfers do not concern real estate transactions.<sup>6</sup>

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<sup>4</sup> While C6-30-13 provides that the Planning Board must, in general, approve public works projects, it also provides that the Board of Representatives may override the Planning Board’s disapproval by a two-thirds (2/3) vote. C1-50-3, however, requires that the Planning Board approve any purchase or lease of real estate by the City or sale or lease real estate belonging to the City.

<sup>5</sup> Sec. C8-60-9. - Title Transfer. If the Board of Representatives adopts the report of the Director of Administration with or without modifications, it shall transmit the same with its resolution of adoption to the Mayor, and the Mayor shall, within ten (10) days thereafter, return the same to the Board of Representatives with approval or disapproval noted thereon. If the Mayor approves the resolution, any land to be taken shall be deemed condemned. Title to such land shall vest in the City in accordance with the General Statutes.

<sup>6</sup> Other places the word “transfer” is used in the Charter include C7-10-8, C8-30-2, C8-30-3, C8-30-11, and C8-30-12 (transfer of funds); C5-20-10 and C7-20-6 (transfer of job position/status); C7-30-8 and C7-40-12 (transfer of pension benefits); and C9-10-4 (transfer of records and personal property).

This review of Charter provisions supports the conclusion that the word “transfer” in C6-120-3 is not intended to include a “lease” or any other contract for a lesser interest in real estate.<sup>7</sup> The Charter uses the word “transfer,” in relation to real property, only to describe a transaction that involves a change in title. When C6-120-3 refers to a “sale or transfer” of real property or to property “sold or otherwise transferred,” it is referring to instances in which the title or ownership of the property is changed as by sale or gift.

State statutes under which municipal powers are established confirm this interpretation. It is, thus, explicit under these statutes that a “transfer” of real property does not refer to a “lease.” These statutes expressly differentiate a “lease” from a “transfer” of property. *See*, for example, Conn. Gen. Stats. § 7-163e (Public hearing on the sale, lease or transfer of real property owned by a municipality)<sup>8</sup>; or Conn. Gen. Stats. § 8-137 (Transfer, sale or lease of real property in a redevelopment area).

Finally, confirmation of the fact that leases of park land are covered under C1-50-3 rather than C6-120-3 can also be drawn from the historical treatment of such leases.

At our request, the Board of Representatives office reviewed the approvals by the Board of the following leases of park land and determined that none of these votes was put to referendum or required a supermajority.

- The Board approved a three year lease with the Golf Authority for Sterling Farms Golf Course in 1990. The current lease was approved in 2007 with an expiration of 2019 and two five year options.

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<sup>7</sup> Moreover, reading C6-120-3 to include lesser interests in real estate within the meaning of transfer would lead to absurd or unworkable results. It would clearly be absurd and unworkable to require a referendum or a two-thirds (2/3) vote of the Board of Representatives for a permit to use a park for an event or for a license to use park land for a summer sports program.

<sup>8</sup> § 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 park land, 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.

- The Board approved a thirty-year lease with Soundwaters in 1999.
- The Board approved a twenty-five year lease with the Bartlett Arboretum Association in 2002.
- The Board approved a ten-year lease with Fore Seasons Restaurants LLC in 2004 to operate the Brennan Golf Course restaurant.
- The Board approved a fifty-year lease with Stamford Sailing Foundation, Inc. in 2005.
- The Board approved a ten-year lease with two additional five year renewals with Halloween Yacht Club in 2006.
- The Board approved a five-year lease with automatic five year renewals with Woodway Country Club in 2007.
- The Board approved a one-year license agreement with automatic one-year renewals with the Mill River Collaborative in May of 2012.
- The Board approved a twenty-year lease with Wildlife Orphanage, Inc. in May of 2012 for a portion of Mianus River Park.

The fact that these leases of park land were approved by the Board demonstrates that the Board - and the City Administration -- have long understood that the super-majority/referendum procedures in C6-120-3 do not apply to leases of park land. Since the first of these leases was approved by the Board, the Charter has been revised three times – in 1995, 2004 and 2012. The text of the pertinent Charter sections has remained consistent throughout the entire period of time, indicating that the City, Board, Administration and three Charter Revision Commissions did not have an issue with the Board’s practice of approving park land leases under the leasing provisions of the Charter. The Charter could have been, but was not amended at least three times to make leases subject to the referendum/supermajority requirement of C6-120-3. As a matter of statutory interpretation, “the failure of the legislature to take corrective action” may be interpreted to mean “the legislature’s acquiescence in [the] construction of a statute . . .” *State v. Evans*, 329 Conn. 770, 805 (2018).

In conclusion, C6-120-3 does not apply to leases of park land. The process for approval of such leases is contained in C1-50-3.

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