

REMINDER:

THIS WEEK'S

**MUNICIPAL COUNCIL
MEETING**

**WILL BE HELD ON
MONDAY, NOVEMBER 7, 2011
AT 7:30 AM**

DUE TO THE CITY ELECTION



AGENDA – NOVEMBER 7, 2011

INVOCATION ROLL CALL RECORDS

HEARING: NONE

COMMUNICATIONS FROM THE MAYOR

APPOINTMENTS

COMMUNICATIONS FROM CITY OFFICERS

Pg. 1-4 Com. from Interim City Solicitor – Transfer and Use of Property for Recreational Purposes.

Pg. 5-6 Com. from Executive Director – Home Rule Petition HOPE VI Fairfax Gardens.

PETITIONS

Hours of Operation

1. Aeropostale located at 2 Galleria Mall Drive, Taunton
2. AP Pretzels of MA, Inc. -dba- Wetzels Pretzels located at 2 Galleria Mall Dr. Taunton
3. Bath & Body Works located at 2 Galleria Mall Drive, Taunton
4. Victoria's Secret located at 2 Galleria Mall Drive, Taunton
5. Tekka Grille located at 2 Galleria Mall Drive, Taunton
6. American Eagle Outfitter's located at 2 Galleria Mall Drive, Taunton
7. AC Galleria Donuts, Inc. -dba- Dunkin Donuts located at 2 Galleria Mall Drive, Taunton
8. Portuguese American Civic Club located at 175 Broadway, Taunton

Miscellaneous

Decision of the Development Impact Review Board on the Petition for Departmental Site Plan Review for a parking lot expansion at 80-82 Broadway, Taunton which is located in an Office/Urban Residential District. **(Informational Only)**

COMMITTEE REPORTS

UNFINISHED BUSINESS

- **Executive Session** – Meet to discuss the status of negotiations with all bargaining units of the City of Taunton, any outstanding issues with regard to negotiations, and progress made with regard to said issues

ORDERS, ORDINANCES AND ENROLLED BILLS

NEW BUSINESS

Respectfully submitted,

A handwritten signature in black ink that reads "Rose Marie Blackwell". The signature is written in a cursive style with a large, stylized initial 'R'.

**Rose Marie Blackwell
City Clerk**

October 31, 2011

Mayor Charles Crowley
City Hall
15 Summer Street
Taunton, MA 02780

**RE: Transfer and Use of Property for Recreational Purposes
pursuant to Chapter 395 of the Acts of 2002**

Dear Mayor Crowley:

You have requested an opinion regarding how the City of Taunton ("City") would acquire from Taunton Development Corporation ("TDC") land for recreational purposes as a substitute for the 25.2-acre parcel of land identified by Chapter 395 of the Acts of 2002 ("Act") and restricted to recreational use by that Act.

In our opinion, based upon the facts you have provided to us and for the reasons described below, any designation and acquisition of a substitute parcel of recreational land must be approved by the Municipal Council, Mayor and the Park and Recreation Commission.

You have provided us with the following facts. TDC is considering using the 25.2-acre parcel of land identified by Section 9 of the Act and restricted to recreational use ("Recreational Area A") for purposes other than recreational use.

Section 9 of the Act states that Recreational Area A "shall be maintained as a recreational area unless and until the Taunton Development Corporation provides to the city of Taunton 25.20 acres or more of contiguous, comparable land within North Taunton, to be approved by a vote of the city council and mayor."

It is clear from Section 9 of the Act that Recreational Area A can only be used for recreational purposes until the Town acquires from TDC alternate property for recreational use as a substitute for Recreational Area A ("Substitute Recreational Area"). That Substitute Recreational Area must contain at least 25.2 acres and be comprised of contiguous parcels located in North Taunton and comparable to Recreational Area A. It is also clear from Section 9 that the Municipal Council and Mayor must approve of the Substitute Recreational Area.

In our opinion, however, based upon the somewhat vague language of Section 9 of the Act, there is a real question as to what process the legislature intended the City to follow for any designation or acquisition of a Substitute Recreational Area and an apparent conflict between Section 9 of the Act and the authority of the City's Park and Recreation Commission

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(“Commission”) to acquire and control recreational land under its enabling act (St. 1980, c. 569, the “Commission’s Enabling Act”) and G.L. c. 45.

When a statute appears vague or there is a conflict between a statute and other law, it is often left to affected parties and the courts to interpret and apply the statute at issue. In interpreting a statute, we must always first turn to one cardinal canon before all others. We must presume that a legislature says in a statute what it means and means in a statute what it says. Connecticut Nat’l Bank v. Germain, 503 U.S. 249, 253-54 (1992).

Using that cardinal rule of construction, it would appear that only the Municipal Council and Mayor, but not the Commission, may approve the designation of a Substitute Recreational Area. However, such a construction of Section 9 of the Act conflicts with the Commission’s authority to acquire and control recreational land pursuant to the statutory framework established by the Commission’s Enabling Act and G.L. c. 45.

The Commission’s Enabling Act created the Commission, essentially merging the City’s former board of park commissioners and the City’s former recreation commission into the Commission. The Commission’s Enabling Act reserved and transferred to the Commission “all the powers, duties and trusts conferred or imposed by law or ordinance on said board of park commissioners and on said recreation commission”

Pursuant to the Commission’s Enabling Act, as well as Section 15-42 of the City of Taunton Revised Ordinances,¹ the powers and duties of the Commission, acting as the City’s board of park commissioners and recreation commission are set forth in G.L. c. 45. More specifically, the Commission’s powers are enumerated in G.L. c. 45, §§ 3 and 14 and those statutes provide the normal statutory framework for the City’s acquisition and use of recreational land.

G.L. c. 45, § 3 states that a board of park commissioners “may locate public parks in its city or town and for that purpose may take in fee by eminent domain under chapter seventy-nine or by purchase, gift, devise or otherwise, land which it considers desirable therefor ... but any such taking by eminent domain or by purchase shall be subject to the provisions of [G.L. c. 40, § 14].” Under this statute, the Commission, acting as a board of park commissioners, may designate and acquire park land, subject only to the applicable requirements of G.L. c. 40, § 14. See G.L. c. 45, § 3 (emphasis added).

G.L. c. 45, § 14 states that any city “may acquire land and buildings within its limits by gift or purchase, or by eminent domain ... or may use suitable land or buildings already owned

¹ Section 15-42 states that, “[a]s provided by statute (Chapter 45 of the General Laws), the [C]ommission shall exercise the powers and duties contained therein as to parks, playgrounds and public domains, and specifically as contained in Section 14 with regard to recreational programs, except the [C]ommission shall not make appropriations of money.”

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by it,² for the purposes of a public playground or recreation centre ... [E]xcept as to the making of appropriations, the powers conferred by this section shall be exercised by the board of park commissioners ... or by a playground or recreation commission ...” See G.L. c. 45, § 14 (emphasis added).

G.L. c. 40, § 14 states that the City “may purchase, or take by eminent domain ..., any land, easement or right therein ... not already appropriated to public use, for any municipal purpose for which the purchase or taking of land, easement or right therein is not otherwise authorized or directed by statute; [provided] the taking or purchase thereof has previously been authorized by the city council ..., [and] an appropriation of money ... has been made for the purpose by a two thirds vote of the city council ...” See G.L. c. 40, § 14 (emphasis added).

The above-referenced statutes create the statutory framework establishing the Commission as the public body that normally acquires land for park and playground purposes, and not the Municipal Council, with the only condition on the Commission’s authority being that the Municipal Council approve necessary appropriations.

Nothing in the Act suggests that the legislature intended for the Act to supersede that statutory framework provided by the Commission’s Enabling Act and G.L. c. 45.³ Therefore, the Act should be read in a manner to resolve conflicts and to give it a reasonable construction so as to harmonize the conflicting statutes. See Commonwealth v. Houston, 430 Mass. 616, 629 (2000).

The Act can be interpreted in a manner consistent with the statutory framework provided by the Commission’s Enabling Act and G.L. c. 45. Although the Act seems to suggest that Municipal Council and Mayor approval may be sufficient to designate the Substitute Recreational Area to be acquired, such approval could plausibly mean approval of any expenses or liabilities associated with the acquisition of a Substitute Recreational Area. In other words, the Municipal Council would approve the acquisition by the City, acting by the Commission, of any Substitute Recreational Area, but would not acquire or accept Substitute Recreational Area.⁴

Lastly, but importantly, the purpose of Section 9 of the Act was to ensure that the City received a 25.2-acre parcel of land for recreational use. Where the Commission would be in charge of any substitute Recreational Area under the Commission’s Enabling Act and the Section 15-42 of the Ordinances, it would seem rational that the Commission also approve the substitution of the alternate site.

² To convert suitable property already owned by the City to recreational purposes requires a determination of surplus and a two-thirds vote by the Municipal Council and approval by the Mayor. See G.L. c. 40, § 15A.

³ The legislature often uses language to the effect of “notwithstanding any special or general law to the contrary” to indicate instances when an act is to supersede and exiting special or general law, and did not do so in the Act.

⁴ That would be similar to how the Municipal Council approves the acquisition of open space under G.L. c. 40, § 8C. G.L. c. 40, § 8C states that a conservation commission “may receive ... interests in real property ... in the name of the city ..., subject to the approval of the city council”

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Therefore, in our opinion, based upon the facts you have provided to us and for the reasons described above, although Section 9 of the Act arguably authorizes the Municipal Council and Mayor to designate any Substitute Recreational Area to be acquired by the City, the better interpretation of Section 9 of the Act is one that is harmonious with the Commission's Enabling Act, G.L. c. 45 and Section 15-42 of the Ordinances, that the designation and acquisition of a Substitute Recreational Area be performed by the City, acting through the Commission with the approval of the Municipal Council and Mayor.

Please note that we have not performed any title examination in connection with your request for a legal opinion. We are basing our opinion solely upon the Act, the Commission's Enabling Act and Chapter 45 of Massachusetts General Laws. We are not making any representations or warranties with regard to title or to the City's rights to Recreational Area A.

If you have any questions regarding this matter, please call.

Very truly yours,


Louis M. Ross


Peter J. Berry
Interim City Solicitor

TAUNTON HOUSING AUTHORITY

30 OLNEY STREET - SUITE B
TAUNTON, MASSACHUSETTS 02780-4141

TEL. (508) 823-6308
FAX: (508) 822-3460
TDD: 1-800-439-2370
www.tauntonhousing.com

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EQUAL HOUSING
OPPORTUNITY

EXECUTIVE DIRECTOR
COLLEEN M. DOHERTY

November 3, 2011

Honorable Mayor Charles Crowley and
Members of the Municipal Council
140 Oak Street
Taunton, MA. 02780

~~Dear Honorable Mayor Charles Crowley and Members of the Municipal Council:~~

Re: Home Rule Petition HOPE VI Fairfax Gardens

The Taunton Housing Authority hereby respectfully requests your assistance in requesting Senator Marc Pacheco and Representative Pat Haddad to file legislation allowing for Chapter 149 exemption in support of our federally funded HOPE VI public housing project. The legislation will allow for the construction and development activity related to redevelopment by the Taunton Housing Authority of the federally funded Taunton HOPE VI public housing project, or any part thereof.

There are many reasons why the Taunton Housing Authority is seeking relief through an exemption to Chapter 149 legislation.

One of the primary goals of HUD's HOPE VI program is to leverage the federal funding of public housing re-development by creating public / private partnerships between PHAs and professional real estate development companies in order to take advantage of their abilities to efficiently design, finance, build and manage affordable housing.

The developer's ability to control costs and schedules and meet all of the hiring goals is directly related to their ability to solicit and negotiate competitive pricing from qualified contractors and subcontractors without the constraints of public bidding requirements. This is true across the country, but it is even more important in Massachusetts because its public bidding procedures include "filed sub bids".

Additionally, HUD builds into their HOPE VI grants aggressive budget, schedule, and MBE, WBE, and Section 3 hiring constraints and if they are not met, the grants are at risk of being re-captured.

6.

Filed sub bidding can be expensive, time consuming, unpredictable, inflexible, and prone to excessive change order claims because:

- a) The cumbersome bidding and award process along with the DCAM certification process for general and sub bidders discourages many highly qualified contractors from participating resulting in less competition for the work.
- b) Unless local contractors are certified through DCAM and familiar and comfortable with the filed sub bid process, they will not have any ability to compete for the work.
- c) The process precludes communication during bidding between the numerous subs and the general contractors, so the omissions and conflicts that always exist in bid documents are not surfaced until after award when they appear as change orders.
- d) Keeping a construction project on budget and schedule requires team work – filed sub bidding does not create a team, in fact it is not uncommon for the final GC and subs selected by the process to be reluctant, even adversarial, “partners”. This results in more change order and delay claims.
- e) If the bidding results come in above the budget, there is no way to negotiate scope / value engineering with the low bidders.

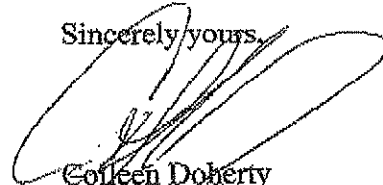
For all of these reasons, all of the HOPE VI projects developed in Massachusetts have been exempted from these 149 bidding requirements through legislation similar to this proposed for Taunton. In addition, this legislation also allows the public streets to be constructed by the general contractor and then turned over to the city after confirmation that they meet all city standards. This is similar the way that private subdivision roads are built and allows the roads to be constructed in a closely coordinated manner as the general contractor constructs the housing.

It should be noted that this legislation preserves sections 26 to 27H of Chapter 149, the State prevailing wage requirements, so the construction contracts will have to meet both Federal (Davis Bacon) and State prevailing wages.

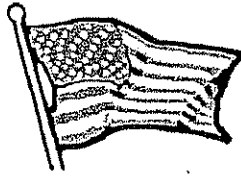
In conclusion, the Taunton Housing Authority requests your support in requesting this legislation to be filed for the Taunton HOPE VI public housing project. Should you be desirous of further information relative to the above, please feel free to contact me at 508-824-5441.

Thank you for your consideration of this request.

Sincerely yours,



Colleen Doherty
Executive Director
Taunton Housing Authority



MONDAY, NOVEMBER 7, 2011

HONORABLE CHARLES CROWLEY, MAYOR
COUNCIL PRESIDENT SHERRY COSTA-HANLON
AND MEMBERS OF THE MUNICIPAL COUNCIL

PLEASE NOTE: THE FOLLOWING COMMITTEE MEETINGS HAVE BEEN SCHEDULED FOR
MONDAY, NOVEMBER 7, 2011 AT 7:30 A.M. AT THE TEMPORARY CITY
HALL AT MAXHAM SCHOOL, 141 OAK STREET, TAUNTON, MA. 02780, IN
THE CHESTER R. MARTIN MUNICIPAL COUNCIL CHAMBERS

7:30 A.M.

THE COMMITTEE ON FINANCE & SALARIES

1. MEET TO REVIEW THE WEEKLY VOUCHERS AND PAYROLLS FOR CITY DEPARTMENTS
2. MEET TO REVIEW REQUESTS FOR FUNDING
3. MEET TO REVIEW MATTERS IN FILE

RESPECTFULLY,

COLLEEN M. ELLIS
CLERK OF COUNCIL COMMITTEES