

MEETING MINUTES  
SPECIAL MEETING  
Easton Board of Selectmen  
June 27, 2019 – 7:00 PM  
Town Hall Conference Room A

Adam Dunsby called the meeting to order at 7:00 p.m.

Present: Adam Dunsby, Kristi Sogofsky and Robert Lessler

1. Kristi Sogofsky moved to approve the meeting minutes from the Easton Board of Selectmen Meeting, June 20, 2019. Robert Lessler seconded. Motion passed unanimously.
2. One resident urged the board to send the proposed ordinance direct to a machine vote.
3. Robert Lessler moved to approve the Easton Historical Society's application for the 2019 Connecticut Neighborhood Assistance Act (NAA) Program for Historic Preservation. Kristi Sogofsky seconded. Motion passed unanimously.
4. Adam Dunsby reviewed the legal opinion submitted by Berchem Moses regarding the petition for a Special Town Meeting, "Repeal of §147-1. Membership; term of office and adoption of revised §147-1. Membership; term of office and repeal of §147-5. Alternate members. And adoption of revised §147-5. Alternate members." It is the opinion of Atty. Ira Bloom that the proposed ordinance is invalid because it cannot commence with the 2019 regular elections under the Secretary of State filing requirements. (see attached legal opinion) Robert Lessler moved to reject the petition to elect Planning and Zoning members and alternates because the proposed ordinance as drafted is illegal or improper under State law. Kristi Sogofsky seconded. Motion passed unanimously.
5. No board member comment.
6. Kristi Sogofsky moved to adjourn at 7:10 PM. Robert Lessler seconded. Motion passed unanimously.

SPEC~06-27-19



## MEMORANDUM

To: Town of Easton Board of Selectmen  
From: Ira W. Bloom, Esq.  
Nicholas R. Bamonte, Esq.  
Date: June 26, 2019  
Re: Proposed Ordinance Regarding Planning & Zoning Commission

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On June 12, 2019, Christine Halloran, Town Clerk for the Town of Easton, confirmed that she had received and verified an eight (8) page petition dated June 7, 2019 proposing a repeal of the existing § 147-1 of the Code of Ordinances and a new ordinance providing for an elected Planning & Zoning Commission ("Commission"), amongst other changes.

Under Code § 200-3, a Special Town Meeting may be convened to consider and vote upon a proposed ordinance by a petition of 50 qualified voters. Ms. Halloran verified 72 signatures upon the subject petition, and therefore a Special Town Meeting may be called for consideration of the ordinance.

We have reviewed the proposed ordinance for conformity with the law. While the substantive provisions of the ordinance are valid, the proposed commencement of an elected Commission with the 2019 regular municipal election cannot occur.

### **1. Ordinance cannot commence with the 2019 regular election.**

The revised § 147-1(A) provides that the Commission members shall be elected as of the 2019 regular election:

"The current Planning and Zoning Commission shall cease to exist as of the municipal regular election in 2019. There shall, however, pursuant to the Connecticut General Statutes as of the municipal regular election in 2019, continue to be a Planning and Zoning Commission...Commencing with the municipal regular election in 2019, three members shall be elected for a term of four years and two members shall be elected for a term of two years."

However, under C.G.S. § 9-254, the Town Clerk must file by May 9, 2019 a list of all Commission vacancies to be voted upon at the regular election:

"Each municipal clerk shall, not later than the one hundred eightieth day prior to the day of any regular municipal election, file with the Secretary of the State...a list of the offices to

be filled at such election and the terms thereof and the number of candidates for which each elector may vote.”

The Superior Court has interpreted that this provision is ministerial, not discretionary.<sup>1</sup> Under the law, failure to comply with a ministerial filing deadline as outlined by state statute invalidates the filing.<sup>2</sup> Therefore, because the list has not been filed with the Secretary of State identifying the Commission vacancies under the proposed ordinance, we conclude that such vacancies cannot be validly voted upon at the 2019 regular municipal election. A vote in November of 2021 would be permitted, assuming proper filing occurs that year.

In order for candidates to be validly elected to the Commission, an ordinance calling for elected members must first be approved, and then a list containing the future Commission vacancies must be provided to the Secretary of State at least 180 days prior to a regular municipal election.

Further, we find no way to presently file an updated list with the Secretary of State in the event that the proposed ordinance is quickly approved. A representative of the Secretary of State called our attention to C.G.S. § 9-221, which provides that vacancies occurring between July 16<sup>th</sup> and September 4<sup>th</sup>, for which a major or minor party nomination has been filed before September 10<sup>th</sup>, may be added to the list provided to the Secretary of State under to C.G.S. § 9-254.<sup>3</sup> However, this statute is inapplicable under the present circumstances. The statute applies “[w]hen under the provisions of any general statute, special act or charter, it is required that a vacancy in any municipal office be filled at the next municipal election... .” Here, the proposed *ordinance* requires that vacancies in the Commission be filled at the next municipal election – not a provision “of any general statute, special act or charter.” Therefore, C.G.S. § 9-221 does not provide authority to cure the existing filing defect under C.G.S. § 9-254.

In addition, effectiveness of the proposed ordinance as of the 2019 regular municipal election presents a number of logistical difficulties related to endorsement/nomination of candidates:

- Under C.G.S. § 9-391, each candidate must be endorsed to run in a primary not earlier than the fifty-sixth day or later than the forty-ninth day preceding the primary.<sup>4</sup> Here, that means that candidates must be endorsed between July 16<sup>th</sup> and July 23<sup>rd</sup>.
- Under C.G.S. § 9-405, candidates other than party-endorsed candidates shall be filed with the registrar not later than the thirty-fourth day preceding the day of the primary. Here, that means other non-party-endorsed candidates must be filed by August 7<sup>th</sup>.<sup>5</sup>
- Under C.G.S. § 9-452, all minor parties nominating candidates for any elective office must file a list of such nominations not later than the sixty-second day prior to the day of the election. Here, that means minor party nominations must be filed by September 4<sup>th</sup>.

<sup>1</sup> See *Seymour Bd. of Fin. v. O'Toole*, No. CV 970059079S, 1997 WL 446215, at \*3 (Conn. Super. Ct. July 31, 1997).

<sup>2</sup> See *Butts v. Bysiewicz*, 298 Conn. 665, 678–79 (2010).

<sup>3</sup> See C.G.S. § 9-461, cited in C.G.S. § 9-221(c).

<sup>4</sup> “If such a certificate of a party’s endorsement is not received by the clerk of the municipality by such time, such certificate shall be invalid ... .” C.G.S. § 9-391.

<sup>5</sup> If no non-party-endorsed candidates are filed by this date, no primary is required pursuant to C.G.S. § 9-417.

- Under C.G.S. § 9-423, the primaries of all parties for nomination to an office to be voted upon at a municipal election must be held on the fifty-sixth day preceding the election. Here, primaries would have to occur on Tuesday, September 10<sup>th</sup>.

Because the Town does not have a charter, and because the Town Code does not address the effective date of new ordinances, C.G.S. § 7-157 determines when a new ordinance becomes effective in Easton. The statute provides for an effective date fifteen (15) days after publication of approval in a local newspaper. Therefore, even if the proposed ordinance is promptly approved, little to no time would be left to comply with the endorsement/nomination requirements described above.

## 2. Validity of provision authorizing removal for cause.

Under the revised § 147-1(B), "A[n elected] member [of the Commission] may be removed for cause by a majority vote at a properly called Town Meeting." This power is authorized by C.G.S. § 8-1, which states that any municipality may, by vote of its legislative body, enact an ordinance providing for the "number of such members [of a zoning commission] and the method of selection and removal for cause and terms of office."

Although the Connecticut Supreme Court in *Simons v. Canty*, 195 Conn. 524 (1985) determined that laws providing for the *recall* of elected or appointed officials are illegal after the enactment of Article 10 § 1 of the state constitution, such laws appear to be distinguishable from the proposed ordinance.<sup>6</sup>

A recall is a procedure where an elected official may be removed at any time during his term of office by a vote of the people at an election called for such purpose by a specified number of citizens. *Poprosky v. Shea*, 21 Conn. App. 351, 354 (1990). Authority to remove an official for cause, however, contemplates removal for "reasons which the law and sound public policy recognize as sufficient warrant for removal, that is, legal cause, and not merely cause which the appointing power in the exercise of discretion may deem sufficient." *State ex rel. Doherty v. Finnegan*, 25 Conn. Supp. 390, 395 (Super. Ct. 1964).

To ensure that the proposed ordinance provision allowing removal for cause is not interpreted as a recall provision, it is recommended that, at a minimum, the ordinance expressly afford a commissioner an opportunity to be heard prior to removal. As stated by our Supreme Court, "[w]here the term or tenure is fixed for a definite period of time, the power to remove at will cannot be implied and such appointee may be removed only for cause and not without notice and an opportunity to be heard." *State ex rel. Raslavsky v. Bonvouloir*, 167 Conn. 357, 362 (1974). Therefore, the proposed ordinance should include a requirement that a commissioner subject to potential removal be notified and have an opportunity to defend his or her position before the Town Meeting. We also rec-

<sup>6</sup> In *Canty*, the Watertown Charter provision in question stated: "Every municipal official in the Town, including members of the Board of Education, holding elective office, either by election or appointment, shall be subject to recall from such office by the electors eligible to vote for such office. Such number of electors as equals at least thirty percent (30%) of the registered voters at the last preceding Town election for the office in question may, by a recall petition, filed and certified in accordance herewith, demand the recall of the person holding such office."

commend listing in the proposed ordinance examples of potential grounds for removal for cause, such as lack of attendance.

### **3. Conclusion**

First, the language of the proposed ordinance repealing the requirements for an appointed Commission and instead requiring that both regular and alternate members are elected by the Town Meeting is authorized under the law. Second, the effective date of the proposed ordinance as of the 2019 regular municipal election is invalid, as the Secretary of State filing requirements have not, and cannot, be complied with under the law. Third, if the proposed ordinance will be withdrawn and revised as a result of our conclusions, then we also recommend incorporating our suggestions above regarding removal for cause of elected Commission members.