



PRELIMINARY MEMO RE PETITION

To: Hon. David Bindelglass, First Selectman, Town of Easton
From: Ira W. Bloom, Esq. and Peter V. Gelderman, Esq., Berchem Moses, PC
Date: May 18, 2022
Subject: Petition for Town Meeting with Respect to South Park Property

This office has been asked to render a preliminary opinion with respect to a certain Petition for Town Meeting received by the Easton Town Clerk on May 5, 2022. This memorandum assumes that the Petition satisfies the technical requirements of Sec. 200-3 of the Code of the Town of Easton that at least 50 inhabitants of the Town of Easton, who are qualified to vote at a town meeting, have properly signed the Petition. We are calling it a “preliminary” memo since there will be further discussion at the Board of Selectmen meeting of May 19, 2022.

Several issues are presented here:

A. CAN THE TOWN MEETING IMPOSE A “PERMANENT” EASEMENT?

The Petition calls for “the Town of Easton [to] provide a permanent conservation easement on the remaining portion of the real property owned by the Town and commonly known as 18-22 South Park Avenue.” The use of the word “permanent” may be inappropriate or at least misleading because any action taken at a Special Town Meeting may be rescinded at a subsequent Special Town Meeting. The right of a town meeting to rescind a prior action of the town meeting is fundamental. For example, in *Terret v. The Town of Sharon*, 34 Conn. 105, 108 (1867), the Supreme Court of Errors¹ held that a vote at a town meeting to pay benefits to soldiers of the town who served in the army during the Civil War could be rescinded. The Court noted “[t]he power of the town to rescind cannot be doubted...”. Interestingly, in this case, the initial town vote to grant benefits was validated by a subsequent act of the State legislature. The Court held that the State act did not obligate the town to pay benefits. Instead it validated the ability of the town to pay such benefits. Even that validating act did not deprive the town meeting the right to rescind. Finally, the Court noted that the benefits were voluntary, and no consideration was received by the town.

¹ Now known simply as the Supreme Court.

In the case of a conservation restriction voluntarily placed on Town property by vote of the Town Meeting (with no consideration), a subsequent Town Meeting could vote to remove the restriction.²

B. DOES THE PETITION AS PRESENTED ADEQUATELY ADDRESS WHAT CAN BE DONE ON THE PROPERTY SO THAT VOTERS HAVE A FULL UNDERSTANDING OF THE CONSEQUENCES OF THE VOTE?

The question posed in the petition, while likely legally sufficient, leaves open several important issues. For example, what is meant by "passive recreation?" Are walking trails permitted? Biking? Horse trails? Gardens? Motor vehicles such as ATVs or snowmobiles? Who will be charged with making these decisions?

The experience of this office is that effective conservation easements or restrictions are generally complicated and lengthy documents that endeavor to answer as many issues as to use as possible. It may be useful to prepare and make available to the Town Meeting voters an actual draft of a conservation restriction that delineates the allowed passive recreational activities

A related issue is the future of the monthly rental to Mr. and Mrs. Blaze. We understand from First Selectman Bindelglass that some of the petitioners hope that the Blazes will continue to live on the property even if the petition is passed at the Town Meeting. Please note, however, *that the wording of the petition does not allow for the continued residency on the property.*

C. MACHINE VOTE.

The Board of Selectmen should note that pursuant to Conn. Gen. Stat. Sec. 7-7, the Board may pass a resolution calling for a machine ballot vote on the petition after discussion at the Town Meeting.

² If the property were conveyed to the Town with such a restriction, the Town would be bound by it and could not rescind it. Conversely if the property were sold by the Town with such a restriction, it would run with the land in perpetuity.