

October 1, 2010

Mr. Peter Tesei  
First Selectman  
Town of Greenwich  
101 Field Point Road  
Greenwich, CT 06830

Dear Mr. Tesei:

Over the last year, I have had the opportunity to become familiar with some of the Town's land use practices, in particular, the process the Town uses to assess whether a project is a "Municipal Improvement" ("MI"). I believe that the MI process currently followed is flawed, but that it may be improved by administrative action without the need to amend the Charter or Municipal Code.

MI appears to be best understood as a finding by the Planning & Zoning Commission (the "Commission") or Representative Town Meeting ("RTM") that a proposed project does not conflict with the Town's goals as expressed in the POCD. Although I do not know the history of the MI rules in the Charter, I infer that they arise from the Town's desire that the ultimate authority for investment, disinvestment and use of the Town's land and buildings should rest with the elected RTM rather than appointed officials, tempered with the understanding that the process should be largely administered by informed, experienced planning officials. Hence the Charter provides that no major work on Town properties may be undertaken without MI; that the process be overseen by the Commission, and regardless of its actions, its decisions may be referred to the RTM which may approve or reject MI.

The Charter sections referring to MI are brief, clear and state objectives but not the process. §99 imposes a single condition upon a project sponsor: that it may take, "no action, other than the making of studies or surveys ... until such proposal has been submitted to and approved by the Commission or has been approved by the Representative Town Meeting as herein provided". §99 is a very reasonable provision. It enjoins Town officials from spending money on a project, for other than preliminary scoping surveys, without a formal process resulting in a finding that the project is compliant with the Town's development goals. §99 is sensible, laudable and appears to be ignored.

For example, the Greenwich High School MISA project was conceived in the early years of this decade and presented to the Board of Education ("BoEd") at

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its October 2004 meeting. The BoEd included a request for \$100,000 in its fiscal 2006 budget to study the proposal and develop the project scope, approach and an educational specification. This work was completed in late 2007 with the BoEd's adoption of the educational specification and the RTM's appointment of the Building Committee ("BC") in 2008. The Town appropriated \$2.13 million to the BC in its fiscal 2009 budget to complete the architectural, engineering, permitting and financing work necessary to begin construction of the project. As of the end of May 2010, the BC had spent nearly \$800,000, and it was only in early June that it received the Commission's MI approval. The Commission's action was subsequently referred to the RTM for approval or rejection at its September 2010 meeting, by which time the BC had spent nearly \$900,000, bringing the Town's total investment in the project to about \$1 million without it having been found to be a MI!

The Commission's regulations, §6-13(a)(8) state that, "Site Plan approval by the Planning and Zoning Commission shall be required in the event that the building permit or other permit application is for construction or enlargement or alteration of a building, or a change of use involving any of the uses or activities listed below", where MI is listed as item "(8)". This can best be interpreted as making MI a **condition precedent** to Site Plan approval, a very reasonable requirement. The problem is that the Commission has interpreted the black letter language of the regulations to mean that it will not consider granting MI **until** it is ready to grant preliminary site plan approval. As noted above, in MISA's case, this finding that the project is consistent with the POCD came after nearly \$800,000 was spent on pre-construction work far more extensive than "the making of studies or surveys" permitted by Charter §99. The project was essentially ready to begin preparing construction documents suitable for construction contractor bidding.

The Town has allowed the conceptual MI review process to become entangled with Site Plan approval and other land use regulatory issues to the extent that MI's intended purpose has been completely lost. Unsurprisingly, I believe the MI process should be returned to a review of the project concept. For MISA, that would have entailed bringing the conceptual design developed with the initial \$100,000 to the Commission to seek a finding that the project was consistent with the POCD. At that time, people could have voiced their reservations about the project and the Commission could have added conditions to its MI approval. If a resident disagreed with the Commission, he or she could have referred it to the RTM in accordance with Charter §100. Should the overall result have been denial of MI, the Town would have only expended about \$100,000. More likely the project scope could have been amended to address the concerns raised so that when the project obtained preliminary site plan approval, we would have satisfied the concerns at little or no additional cost. We would not have put nearly \$900,000 at risk.

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Since neither the Charter nor the Commission's regulations appear to say anything about the process to be followed to obtain MI, I believe that the process is amenable to administrative change without having to alter the Charter, the Municipal Code or the Commission's regulations. I believe that you or the Selectboard, together with other appropriate officials should initiate a review of the current regulations to improve the MI process by re-focusing it on the early approval or disapproval of the project's compliance with the Town's POCD.

In addition to the issue of when a project should seek MI, there are at least three other MI questions which should be addressed: (1) What, if any, is the *de minimus* level of a project below which a department may proceed without MI, (2) Does a tenant or custodian, such as, the Old Greenwich Yacht Club, the Cos Cob Revolver and Rifle Club or the Bruce Museum, need to obtain MI approval before making changes to the leased property, and (3) In the case of a non-Town party, such as the Greenwich Point Conservancy or Friends of Greenwich Point which offers to improve Town property, what party obtains MI approval? Stated differently, do non-governmental parties have the standing to seek MI or does MI require a departmental sponsor?

There is a separate Charter question which ought to be addressed. Pursuant to §100, the Commission has 90 days to approve, disapprove or postpone action on an MI request, which must be perfected by making proper notice. Any of these actions may be referred to the RTM. However, if the Commission fails to act in the 90 days, MI is granted by default and is not referable to the RTM. I believe it would be worthwhile to consider a Charter amendment to rectify this omission.

If you have any questions or comments, I would be pleased to discuss them with you at your convenience.

Yours very truly,



Robert K. Brady

cc: T. Byrne  
P. Berg  
G. Ennis  
R. Kral

§ 99 GREENWICH MUNICIPAL CODE

**Sec. 99. Municipal improvements; approval.**

(a) After the passage of this Article **no action, other than the making of studies or surveys, shall be taken by any Town agency, the Board of Education or the Housing Authority on any proposal involving;**

- (1) The location, relocation, major redesign, extension or abandonment of any street or sewage disposal plant;
- (2) The acquisition of land for, or the location, relocation, abandonment, sale, **lease or major redesign of public real property or public buildings, including schools;**
- (3) The extent and location of transportation routes and terminals whether publicly or privately owned; or
- (4) The location of public housing projects.

Until such proposal has been submitted to and approved by the Commission or has been approved by the Representative Town Meeting as herein provided.

(S.A. 469 § 17, 1951.)

**Sec. 100. Municipal, improvements; referral to Representative Town Meeting.**

(a) **The failure of the Commission to act upon any proposal, submitted to it pursuant to Section 99 hereof, within ninety (90) days after such submission shall be deemed to constitute an approval thereof.** The Commission may, by resolution adopted prior to the termination of the ninety (90) day period and for sufficient reasons to be stated in the resolution, defer approval for any length of time reasonably necessary.

(b) In the event of the approval or disapproval or deferment by the Commission of any such proposal, the Commission shall cause a notice of such action to be published in a newspaper having a general circulation in the Town and the Town Agency, the Board of Education or the Housing Authority having original jurisdiction of the matter, or any person owning property within the Town, may, within thirty (30) days from the date of publication of such notice by the Commission, refer such proposal to the Representative Town Meeting. The Representative Town Meeting shall have power to approve such proposal or to reject it. (S.A. 469 § 18, 1951; as amended by RTM, 6/8/70.)

~~**Sec. 101. Subdivision of land; procedure; regulations.**~~

~~(a) No subdivision of land shall be made until a plan for such subdivision has been approved by the Commission. Any person, firm or corporation making any subdivision of land without the approval of the Commission shall be fined not more than Two Hundred Dollars (\$200.00) for each lot sold or so subdivided.~~

~~(b) All plans for subdivision shall, upon approval, be filed or recorded in the office of the Town Clerk. Any plan not so filed or recorded within ninety (90) days following its approval by the Commission or within ninety (90) days of the date upon which such plan is taken as approved by reason of the failure of the Commission to act, shall become null and void. No such plan shall be recorded or filed by the Town Clerk or other officer authorized to record or file plans until its approval has been endorsed thereon. The filing or recording of a subdivision plan without such approval shall be void.~~

**Sec. 6-12. LIMITATIONS ON PERMIT ISSUANCE.**

- ~~(a) Whenever a building permit is issued for a building or an addition to an existing structure to be located within three (3) feet of any required yard, the Building Inspector shall make the permit conditional upon the submission of proof after the foundation of the building has been completed that the location of the foundation and the building to be placed thereon is not in violation of these regulations. (11/8/83)~~
- ~~(b) Whenever a building permit application is submitted for a structure(s) that utilizes ninety (90) percent or more of the allowable floor area ratio, the applicant shall provide detailed dimensioned floor plans that clearly illustrate the floor areas and floor area calculations for the proposed construction and any other existing structure on the same lot. (4/30/2002)~~
- ~~(c) Whenever a structure that has been approved and that utilizes ninety (90) percent or more of the allowable floor area ratio is constructed, detailed dimensioned floor plans signed and sealed by a Connecticut registered architect attesting that the plans depict the building as constructed shall be submitted prior to issuance of a certificate of occupancy. (4/30/2002)~~
- ~~(d) Provide an as built property improvement and topographic survey prepared by a Connecticut Licensed Land Surveyor that provides proof of compliance with the standards of 6-5 (a) (45.1). (4/30/2002)~~
- ~~(e) No building permit for any non-residential building or multi-family building shall be issued and no parking area shall be constructed, resurfaced, extended or altered as to layout for use with an existing non-residential use or multi-family use except in accordance with a Site Plan approved by the Planning & Zoning Commission or Town Planner or his designee in accordance with Sec. 6-15. (2/7/2001) (4/30/2002)~~

**Sec. 6-13. SITE PLAN APPROVAL REQUIRED BY PLANNING AND ZONING COMMISSION.**

- (a) **Site Plan approval by the Planning and Zoning Commission shall be required in the event that the building permit or other permit application is for construction or enlargement or alteration of a building, or a change of use involving any of the uses or activities listed below.** In deciding on a site plan the Commission may approve, deny or modify the plan:
  - (1) A residential use involving the housing of three (3) or more families on one lot.
  - (2) Any non-residential use, or group of uses.
  - (3) Any building constructed or altered in such a manner as to require additional off-street parking or access from the street to the premises.
  - (4) Any change from residential to non-residential use.
  - (5) Construction, or alteration of the exterior of any multi-family structure or group of structures with five or more dwelling units or any non-residential structure or any structure containing a mix of residential and non-residential uses. Exterior alterations shall include but not be limited to replacement of doors or windows or signs involving a substantial change in design, material or color as well as to removal or alterations of roof top mechanical structures and other integral parts of the structure.
  - (6) Any building or portion of a building housing an athletic facility that occupies more than 1,200 square feet of floor area.
  - (7) Any use requiring a Special Permit. Site Plan Approval for any use requiring Special Permit shall be initiated as part of special permit procedure. (6/17/83)
  - (8) **Municipal Improvements submitted for Commission approval.**
  - (9) An increase in non-residential usable floor area as a result of enlargement of a building, or conversion of accessory storage space, or interior alterations.

(4/30/2002)

- (b) The Town Planner may waive full Commission review of small-scale projects, but may require the approval of the Architectural Review Committee.
- (c) In deciding on a site plan, the Commission may approve, deny, or require modification of the plan according to the standards set forth in Sec. 6-15. (5/4/2005)
- (d) Administrative site plan approval for tents for commercial purposes shall be subject to the approval of the Town Planner or his or her designee when the event involves the erection of a tent(s) for non-residential use that meets one or more of the following criteria.
  - 1. Is more than 350 sq. ft. in total area with no seating, or if used for seating that will seat 50 or more people, or
  - 2. Regardless of size is located in an area designated for parking or drives.
  - 3. Administrative site plan approval for tents by Town Planner shall be limited to fourteen (14) days. Longer durations require approval by the Planning and Zoning Commission and may be re-approved annually by the Town Planner or his or her designee. (5/4/2005)

#### **~~Sec. 6-14. PROCEDURE.~~**

##### ~~(a) Preliminary Approval~~

~~Applications for preliminary site plan approval shall be made on forms provided by the Planning Staff. In order to be submitted by the Planning Staff to the Commission, applications for preliminary site plan approval must be complete including all of the following documents. If the Planning Staff finds any of the below requirements not applicable for small-scale projects, such items may be waived.~~

- ~~(1) Ten copies of a survey folded to 9"x12" showing existing conditions including:~~
  - ~~A) Locations and dimensions of all existing buildings, structures, fences, retaining walls, utility facilities, trees of six (6) inches or more in diameter at breast height, and other similar features.~~
  - ~~B) Existing contours at no more than a two-foot vertical interval, unless waived by the commission Staff in circumstances where such contours may not be necessarily pertinent. The survey shall indicate topographic conditions of the subject property.~~
  - ~~C) The location of all existing watercourses, intermittent streams Wetlands as required by IWWA, Flood Hazard Lines as determined by FEMA, springs and rock outcrops, or a note indicating that none exist, with the sources of information listed.~~
  - ~~D) The zone in which the land to be developed falls and the location of any town and zone boundary lines within or adjoining the tract, and yard dimensions to existing buildings. Lot area, by zone, shall be indicated.~~
  - ~~E) The title of the development, date, revision date if any and nature of revision, north arrow, scale, and the name and address of owner and names of owners of adjacent land.~~
  - ~~F) Street and property lines, curbs, edges of pavement, sidewalks, easements, right-of-way, covenants, and deed restrictions.~~
  - ~~G) Traffic lights and controls, public trees, catch basins, hydrants, and power and telephone lines in adjacent streets.~~
  - ~~H) Certification with the signature and seal or registration number of a registered land surveyor licensed in the State of Connecticut that the drawing is substantially correct to A-2 Standards, and that the property is in a designated zone under the zoning regulations. (5/4/2005)~~

(5/4/2005)