OFFICE OF THE
FIRST SELECTMAN

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TOWN HALL
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BOARD OF SELECTMEN MEETING
TUESDAY, FEBRUARY 17, 2015
MEETING ROOM B, WILTON TOWN HALL

PRESENT: BOARD OF SELECTMEN – First Selectman Bill Brennan, James Saxe, Richard Dubow, Michael Kaelin, Deborah McFadden

GUESTS: Town Counsel Ken Bernhard, Alex Ruskevich representing Sensible Wilton, Sandy Dennies, Jacqueline Rochester

OTHERS: 3 Members of the Press, Members of the Public

After reading a statement setting the ground rules for discussion on the first item on the agenda, Mr. Brennan called the meeting to order at 7:30 p.m.

A. Consent Agenda

Upon motion by Ms. McFadden, seconded by Mr. Dubow, the consent agenda was approved, with an adjustment to the Board of Selectmen Minutes of January 20, 2015 to show the correct vote for Second Selectman as 3-2:

Minutes
- Board of Selectmen Meeting – January 20, 2015
- Board of Selectmen Meeting – Budget Work Session – January 22, 2015

Gifts
- The Greens at Cannondale for Senior Center Newsletter Sponsorship - $425
- Wilton Meadows for Senior Center Newsletter - $425
- Realty Seven Charitable Fund for Wilton Police Gift Fund (Body Cameras) - $5,000
- Jack Parascondola (Hunter Volunteer) – 2 Digital Game Cameras (Value $80 ea.)

Mr. Brennan thanked all citizens and corporations for their generous gifts.

B. Discussion and/or Action

1. Consideration of a Petition requesting a Special Town Meeting be held to revote last September's referendum authorizing funding for the Miller Driscoll School Renovation Project

   Mr. Brennan emphasized that the meeting is a regular BOS meeting and not a Public Hearing and that a Public Comment session will follow after the Board of Selectmen has made their comments. Mr. Brennan stated that due to heavy attendance, public comments will be limited to 3 minutes. Motion made by Michael Kaelin to limit public comments to 3 minutes. Seconded by Deborah McFadden, unanimously carried.

   Mr. Brennan read comments and gave background information on the Miller Driscoll Renovation Project and offered copies of the Legal Opinion (attached) that was prepared by Town Counsel regarding Sensible Wilton's Petition.

   Mr. Brennan asked Town Counsel Ken Bernhard to speak regarding Sensible Wilton's Petition for a revote. Mr. Bernhard referenced his legal opinion (attached) that was given to the Board of Selectmen in November 2014 advising that the Board of Selectmen did not have a right to call a referendum vote on a bonding issue if petitioned by the public. Mr. Bernhard cited legal precedent and stated that if the Board of Selectmen ordered a revote, they would risk getting mired in other legal ramifications. Copy of Mr. Bernhard's comment is attached.

   Mr. Brennan asked each Board of Selectmen member to comment. Mr. Kaelin disclosed that he was a member of the Charter Commission and mentioned his familiarity with the Town Charter. He stated that there is no authority in the charter, the state constitution or state statutes that allows the Board of Selectmen to order a revote. The Board does not have the legal authority to do that.

   Mr. Dubow stated that the vote on the referendum was conducted properly and the results have been certified by the Registrars of Voters and feels it is not a reasonable option to nullify a legitimate vote that was taken by the town.

   Ms. McFadden commended the citizens who petitioned on their energy and tenacity, but took exception with their cause. She stated that you cannot have a do-over in elections and the votes must be respected. Wilton citizens should be more involved and more diligent about turning out to vote.

   Mr. Saxe mentioned his long participation on the Miller Driscoll project and his desire to get the project completed as the school has long been neglected. Miller Driscoll is the gateway to the community and is the first thing people look at when looking for a new home.

After the Board of Selectmen comments, Mr. Brennan once again stated that allowing a revote of a lawfully conducted bonded capital referendum vote due to dissatisfaction by any party with the outcome of the vote would be a mistake and a terrible precedent to establish. Mr. Brennan than opened the floor to Public Comment.

Alex Ruskevich – Sensible Wilton. Gave a handout to each of the BOS members and spoke to specific pages in the handout with regard to request for a revote. Mr. Ruskevich feels that the vote was not done lawfully.

Tom Curtin – 22 Tamarack Place – Feels there should have been much better communication and collaboration regarding dissemination of information about the Miller Driscoll Project.

Richard Creeth – 250 Catalpa Road - Referendum vote was close, but majority wins. There were multiple discussions and meeting properly noticed.

Curt Noel – Keelers Ridge took issue with how the Miller Driscoll Building Committee was assembled.

Glen Hemmerle – 25 Collingswood Road – Noted that complaints about the formation of the Building Committee should have been made long before if believed to be formed illegally.

Ross Tartell - 116 Washington Post Drive – Compared data that Sensible Wilton is using in comparison studies for the renovation and feels comparison is skewed.

Mohammed Ayoub – 87 Millstone Road – Concerned that numbers are off regarding square footage of project and costs.

Mr. Brennan once again noted the purpose of the Board of Selectmen Meeting and to keep comments relating to the Sensible Wilton Petition.

Allison Mark – 32 Carriage Road – Felt the vote was done with some sleight of hand.

Patty Temple – Drummond Hill Road – Felt information was not readily available as vote happened so soon after Labor Day. Feels better job needs to be done recording meeting minutes.

Buck Griswold – 47 Keelers Ridge Road – Feels setting a very bad precedent if revote is done. Members on committees are volunteers and put in long hours on projects

Steve Hudspeth – Felt there was a lot of information made available in the print press and the online press to inform about the Miller Driscoll Project.

Not in favor of a revote – no do-overs. Commented that 750 citizens who signed the petition, failed to vote on the referendum.

David Waters – Obligation of the electorate to become informed.

Paul Burnham – 239 Thunder Lake Road – spoke regarding the Town Charter and deliberate determination to exclude Bonding from petitions for revote.

Gil Bray – Does not want his vote to be disenfranchised

Brian Lilly – 17 Turner Lane - People should be more attuned to what the process is and be more civically minded.

Paul Hannah – 11Shagbark Place – Volunteers are what the Town rely on. Voters will not always agree. Agrees with Town Counsel Bernhard's legal opinion.

Marianne Gustafson – Distributed a multipage handout to the Board of Selectmen. Feels the dates of meetings – publication was poor and provided to a targeted audience. Agreed that the school needs improvements, but wanted better notification for all residents.

Al Alper – 78 Pin Oak lane - Believes a court case will come of this petition if revote is allowed. Sees a problem in getting volunteers for committees if this issue moves forward.

Marissa Lowthert – Keelers Ridge – Look to people who have spoken tonight. Students of Miller Driscoll need new roof and New HVAC now not two years from now.

Jim Newton – Valeview Road – Supports keeping the vote intact. The measure was passed and it's time to proceed with building.

With all citizens wishing to speak, having been heard, Mr. Brennan closed the floor to public comment and made closing comments regarding the vote. Mr. Brennan put the question to the board if there is a need for a revote. There was unanimous consensus from the Board of Selectmen that there was no support for a revote or further action on the Miller Driscoll referendum item.

2. <u>Consideration of granting an easement over Town property to Yankee Gas to accommodate a gas line connection to a residential property located at 21 Cider Mill Place, per the attached Gas Distribution Easement Agreement and drawing</u>
   Mr. Brennan distributed a memo summary (attached) regarding the request for an easement over Town property to Yankee Gas. Town Counsel has reviewed the easement. Motion made by Ms. McFadden to approve the

easement as outlined in the package. Motion seconded by Mr. Saxe, unanimously carried.

3. Consideration of the approval of the Department of Transportation Master Municipal Agreement for Right Way Projects
   Mr. Brennan reviewed the Department of Transportation Master Municipal Agreement for Right Way Projects. State is trying to improve the process to save delays in the future when Right of Way projects come up that would involve state or federal funds. Town Counsel has reviewed the Agreement. Motion made by Mr. Brennan to approve the Department of Transportation Master Municipal Agreement for Right Way Projects consistent with the State's proposal. Motion seconded by Mr. Kaelin, unanimously carried.

4. Consideration of approval of $18,000 from Charter Authority to fund Fraud Risk Assessment, consistent with recommendation by Blum Shapiro, Town Of Wilton's auditor firm.
   Mr. Brennan reviewed the request from the Board of Finance. Motion made by Mr. Brennan to approve the request for up to $18,000 from Charter Authority to fund Fraud Risk Assessment, consistent with the recommendation by Blum Shapiro, the Town of Wilton's auditor firm. Motion seconded by Ms. McFadden, unanimously carried.

5. Miscellaneous Other Business
   Mr. Brennan made a motion to reappoint members of the Energy Commission (as attached). Motion seconded by Ms. McFadden, unanimously carried.

   Mr. Brennan read a standard letter (attached) asking for approval to sign the letter authorizing Randall S. Luther of Tai Soo Kim to pursue land use approvals to proceed with the initial phase of the Miller Driscoll School renovation. The letter is needed to request permits for temporary classrooms. Ms. McFadden moved to approve the signing of the letter my First Selectman Brennan. Motion seconded by Mr. Kaelin, unanimously carried.

C. Reports

First Selectman's Report
Mr. Brennan stated how pleased he was that the meeting went well. Mr. Brennan mentioned that he asked Selectman Saxe be the lead on the Station 2 project and that Station 2 will be added to the Capital Tour on Saturday February 21, 2015 at 9:00AM beginning at DPW. Budget due to Finance on March 6, 2015.

Selectmen's Reports

Michael Kaelin – Echoed comments on the meeting and how it went well and will process information that was received this evening.

Dick Dubow – Tribute to the Town how citizens conducted themselves at meeting.

Jim Saxe – Thanked all that attended the meeting.

Deborah McFadden – Letter to the Editor on issue related to services, speed and safety on Metro North. Also questions regarding testing of water by Health Department and the State. Would be useful to citizens to have notice on the website to help residents understand what the testing is about.

State Senator Toni Boucher spoke to the Metro North Issues and needs. She mentioned that several First Selectmen made the trip to Hartford to voice their concerns regarding Metro North. She mentioned that we have a 60-year contract with Metro North and are now in the 30th year of that contract. Noted that we have the ability, with 18 month notice, to terminate if we wish to do so.

Ms. Patty Temple offered some constructive comments about communication regarding the fact that some people did not know about the referendum vote for the Miller Driscoll Project. She feels a lot more information from committee meetings should be put in the minutes and made readily available. Mr. Saxe indicated that there will be monthly updates from each Building Committee that will be available in the future.

Steve Hudspeth, thanked the Board of Selectmen for handling the meeting well and in a very constructive way.

D. Adjournment – Having no further business, the meeting was adjourned at 9:50 p.m.

Jacqueline Rochester, Recording Secretary

Town of Wilton Legal Opinion on Authority to Petition for a Revote on a Bond Authorization

Summary

The Town Attorney disagrees with Sensible Wilton's interpretation of the Town Charter for the following reasons.

Section C-9 B (1) of the Town Charter intentionally excludes bond authorizations from the list of permitted items or proposals that may be considered through the power of initiative. Although Sensible Wilton now claims not to be proceeding under section C-9 B (1), it is instructive that the provision references five specific items or proposals that may be sought via the power of initiative; see sections C-6 A (3) – (7); but excludes the provision pertaining to bond authorizations exceeding one year in term, section C-6 A (2). This can only be viewed as an intentional exclusion. See *Commissioner of Public Safety* v. *Freedom of Information Commission*, 312 Conn. 513, 529 (2014) (stating rule of construction that expression of one thing is exclusion of another). If the Charter intended to allow such bond authorizations to be proposed through the power of initiative, section C-6 A (2) could have been expressly included in the items and proposals referenced in section C-9 B (1). Indeed, this is the only plausible reading, as section C-33 A of the Charter provides that "[t]he Board of Selectman, and only the Board of Selectmen, shall have the power to propose the issuance of bonds to the Town Meeting."

Section C-9 B (4) does not grant the authority to petition for a revote on a bond authorization. This section is not so broad as to allow electors to petition for any and all legislative action. This is demonstrated by the fact that, as previously stated, the Charter does not allow the electors of Wilton to propose the issuance of bonds to the Town Meeting. But Sensible Wilton is not proposing the *issuance* of a bond – it is attempting to *invalidate* a previous bond authorization. Thus, the more salient question is whether section C-9 B (4) is a mechanism for citizens who disagree with the result of a vote to petition for a "second bite at the apple." It is not. Otherwise, a relatively small number of electors could cause a revote of any proposal – even those which have been validly approved by a sufficient number of voting electors. In fact, there does not seem to be a Charter provision prohibiting yet *another* petition for *another* revote if the same proposal is approved again after the first revote, and so on. This is not a valid interpretation of section C-9 B (4).

To be sure, the Charter does permit petitions to amend or repeal existing ordinances; section C-9 B (2); or "[t]o overrule any legislative action of the Board of Selectman." Section C-9 B (3). But in those provisions, the Charter intentionally uses words such as "amendment," "repeal," and "overrule." This is not the case with section C-9 B (4), which only uses the word "propose." If the drafters of the Charter intended to permit petitioners to amend, repeal, or overrule any and all legislative actions, including those already directly voted upon by the electors, they could have done so expressly. See *Marchesi* v. *Board of Selectmen*, 309 Conn. 608, 618 (2013) ("it is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so").

Ultimately, the power of initiative is an important right granted by the Charter, but it is not unlimited in scope. The Charter simply does not permit revote petitions each and every

time any measure passes, regardless of the margin of victory, and regardless of whether the validity of the vote is being challenged by other means. At this time, the approval of the Miller-Driscoll renovation project represents a valid and binding decision of the Wilton electorate made pursuant to law.

A full text of the legal opinion is attached in a separate document for additional reference.

INTEROFFICE MEMORANDUM

TO: Wilton Board of Selectmen

FROM: Ken Bernhard, Town Attorney.

RE: Proposed Revote on Miller-Driscoll Renovation Project

DATE: November 4, 2014

QUESTION

Does the Wilton Town Charter permit the use of the power of initiative to petition for a revote on a bond authorization that was previously approved by the Town Meeting?

SHORT ANSWER

No. The Town Charter does not contemplate the use of the power of initiative to demand a revote of a bond authorization that was already duly approved by the Town Meeting.

ANALYSIS

The question of whether voters may petition for a revote of a bond authorization must be addressed by referring to Article III of the Town Charter, which governs the powers and duties of the Town Meeting as a legislative body. Section C-5 A provides that the powers of the Town are vested in and exercised by the Town Meeting except as otherwise allocated by the Charter, General Statutes, applicable Special Acts, or Town ordinances. Section C-6 A provides that the legislative body of the Town is the Town Meeting with respect to ten enumerated circumstances, and § C-6 B provides that the Board of Selectmen is the legislative body in all other matters.

Section C-7 governs the call and notice of meetings of the Town Meeting. Subsection A requires that all meetings of the Town Meeting be called by the Board of Selectmen, and requires the Board of Selectmen to fix the date of every meeting. Subsection B sets the rules for noticing

such a meeting, and sets forth the required contents of the notice. The Charter also permits the Board of Selectman to call a "Special Town Meeting," which is defined as "[a] meeting of the Town Meeting called at the discretion of the Selectmen or pursuant to § C-9." Article I, § C-1 C. Section C-9 A (2) specifically permits the Board of Selectmen to call a Special Town Meeting if they deem it "necessary or desirable."

In addition to the power of the Board of Selectman to call a Special Town Meeting at its discretion, § C 9 A of the Charter provides that "[t]he Board of Selectmen shall call a Special Town Meeting whenever: (1) It is requested to do so by petition signed by at least 2% of the electors of the Town and filed with the Town Clerk pursuant to Subsection C below . . . ." Subsection C refers to this as the "power of initiative," and sets forth procedural requirements concerning how it must be implemented.

The primary provision at issue is § C 9 B,[1] which provides as follows: "B. The electors of the Town shall have the power of initiative to call a Special Town Meeting pursuant to Subsection C . . . (1) To consider any item or proposal permitted under § C-6 A (3) through (7); (2) To consider a proposed ordinance, an amendment to an existing ordinance or a proposal to repeal an existing ordinance; (3) To overrule any legislative action of the Board of Selectmen; or (4) To propose any other legislative action." Seeing no evidence to the contrary, this must be considered an exhaustive list of reasons for which a Special Town Meeting may be compelled via the power of initiative. *Commissioner of Environmental Protection* v. *Mellon*, 286 Conn. 687, 693, 945 A.2d 464 (2008) (unless there is contrary evidence, statutory itemization indicates

[1] Section C-9 B is not explicitly referenced by §§ C-9 A or C, but by its plain language, it refers to the "power of initiative," and therefore must be given effect as limiting or modifying that power. *Doe* v. *Norwich Roman Catholic Diocesan Corp.*, 279 Conn. 207, 216-17, 901 A.2d. 673 (2006) (interpretations rendering provision superfluous should be avoided).

that legislature intended given list to be exclusive). Thus, resolution of the present issue depends on the proper interpretation of § C 9 B.

"In construing a [town] charter, the rules of statutory construction generally apply." (Internal quotation marks omitted.) *Stamford Ridgeway Associates* v. *Board of Education*, 214 Conn. 407, 423, 572 A.2d 951 (1990). In the realm of statutory construction, "[the] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In seeking to determine [the] meaning [of a statute], General Statutes § 1-2z directs [the court] first to consider 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. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Saunders* v. *Firtel*, 293 Conn. 515, 525, 978 A.2d 487 (2009).

"A [town] charter must be construed, if possible, so as reasonably to promote its ultimate purpose. . . . In arriving at the intention of the framers of the charter the whole and every part of the instrument must be taken and compared together. In other words, effect should be given, if possible, to every section, paragraph, sentence, clause and word in the instrument and related laws. The real intention when once accurately and indubitably ascertained, will prevail over the literal sense of the terms. When the words used are explicit, they are to govern, of course. If not, then recourse is had to the context, the occasion and necessity of the provision, the mischief felt, and the remedy in view. The language employed must be given its plain and obvious meaning, and, if the language is not ambiguous a court cannot arbitrarily add to or subtract from the words

employed." (Citation omitted; internal quotation marks omitted.) *Stamford Ridgeway Associates* v. *Board of Education*, supra, 214 Conn. 423-24.

In addressing the scope of the power of initiative, it is necessary to consider the plain meaning of the relevant Charter provisions along with their relationship to one another. Since the present issue does not involve an ordinance or a legislative action of the Board of Selectman; see §§ C-9 B (2) and (3); the authority to petition for a revote via the power of initiative must be found within § C-9 B (1) or § C-9 B (4).

Section C-9 B (1) lists five permitted items or proposals that may be considered through the power of initiative. See §§ C-6 A (3) through (7). Excluded from such items and proposals, however, is the provision pertaining to bond authorizations exceeding one year in term, § C-6 A (2). The exclusion of § C-6 A (2), which immediately precedes five included items and proposals, is presumed to be intentional. See *Commissioner of Public Safety* v. *Freedom of Information Commission*, 312 Conn. 513, 529 (2014) (stating rule of construction that expression of one thing is exclusion of another). If the Charter intended to allow such bond authorizations to be proposed through the power of initiative, § C-6 A (2) could have been expressly included in the items and proposals referenced in section C-9 B (1). See *Marchesi* v. *Board of Selectmen*, 309 Conn. 608, 618, 72 A.3d 394 (2013) ("it is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so" [internal quotation marks omitted]).

Moreover, § C-33 A, which establishes bonding procedures, provides that "[t]he Board of Selectman, and only the Board of Selectmen, shall have the power to propose the issuance of bonds to the Town Meeting." If § C-9 B (1) is construed to permit bonds to be proposed by petition, it would conflict with § C-33A. Interpretations that create discord, rather than harmony,

are generally disfavored. *Sokaitis* v. *Bakaysa*, 293 Conn. 17, 23, 975 A.2d 51 (2009). Instead, "[t]he legislature is always presumed to have created a harmonious and consistent body of law . . . . [T]his tenet of statutory construction . . . requires [courts] to read statutes together when they relate to the same subject matter . . . . Accordingly, [i]n determining the meaning of a statute . . . [courts] look not only at the provision at issue, but also to the broader . . . scheme to ensure the coherency of our construction." (Internal quotation marks omitted.) Id., 23. Thus, § C-9 B (1) does not permit bond authorizations to be proposed via the power of initiative, but only through the Board of Selectman using the procedures set forth in § C-33.

The only remaining provision that could authorize a revote petition on a bond authorization is § C-9 B (4). On its face, this provision permits the use of the power of initiative "[t]o propose any other legislative action." The use of this seemingly broad language is peculiar, however, given that the preceding provisions of §§ C-9 B (1) through (3) are fairly specific about what ends may be accomplished via the power of initiative. Read broadly, §C-9 B (4) renders the power of initiative virtually unlimited in scope. Nevertheless, for the following reasons, such a broad interpretation not warranted in this case.

While the Connecticut Supreme Court has stated in one case that "any" is too comprehensive a word to receive a narrow construction; *New York, N.H. & H.R. Co.* v. *Stevens*, 81 Conn. 16, 21, 69 A. 1052 (1908); the Court has also more recently stated that "[t]he word 'any' has a diversity of meanings and may be employed to indicate 'all' or 'every' as well as 'some' or 'one.' Its meaning in a given [provision] depends upon the context and subject matter of the statute." (Internal quotation marks omitted.) *Stamford Ridgeway Associates* v. *Board of Education*, supra, 214 Conn. 428. In *Stamford Ridgeway Associates*, the Court was called upon to interpret a zoning provision in a city charter which used the phrase "in any proposed

amendment." Id., 430. Rather than interpreting the word "any" broadly, the Court held that a more narrow construction was the only reasonable and rational one, and served to effectuate the ultimate purpose of the charter. Id. Similarly, the use of the word "any" in this case is not conclusive proof that an all-encompassing construction of the phrase "[t]o propose any other legislative action" is necessary or even reasonable.

The language of §§ C-9 B (2) and (3) further supports a more narrow construction of § C-9 B (4). Section C-9 B (2) permits the use of the power of initiative "[t]o consider a proposed ordinance, an amendment to an existing ordinance or a proposal to repeal an existing ordinance." Section C-9 B (3) permits the use of the power of initiative "[t]o overrule any legislative action of the Board of Selectmen." In those provisions, the Charter uses the words "amendment," "repeal," and "overrule" to describe actions the Town Meeting can take following a successful petition. In contrast, § C-9 B (4) uses only the word "propose."

"It is a familiar principle of statutory construction that where the same words are used in a statute two or more times they will ordinarily be given the same meaning in each instance." (Internal quotation marks omitted.) *Stamford Ridgeway Associates* v. *Board of Education*, supra, 214 Conn. 431. Additionally, "[w]here a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed." (Internal quotation marks omitted.) *Hatt* v. *Burlington Coat Factory*, 263 Conn. 279, 310, 819 A.2d 260 (2003). In the present matter, if the drafters of the Wilton Charter intended to permit petitioners to amend, repeal, or overrule particular legislative actions, including those already directly voted upon by the electors, they could have done so expressly, using the same language. Instead, the drafters used only the word "propose," unaccompanied by other more specific words used in the preceding two subparts.

Although "propose" is generally used in a fairly broad sense, as in the phrase "propose a revote," the fact that the Charter differentiates between that word and a narrower word such as "amendment" implies that such a broad construction is not necessarily required. Compare Black's Law Dictionary (9th Ed. 2009) (defining "proposal" as: "Something offered for consideration or acceptance") with *Stamford Ridgeway Associates* v. *Board of Education*, supra, 214 Conn. 425 (interpreting "amendment" as "effecting a change in existing law"). Consequently, it is reasonable to interpret "propose," as used in § C-9 B (4), as excluding situations in which the petition seeks to amend, repeal, or overrule legislative actions not expressly permitted by §§ C-9 B (1) through (3).

The intentional exclusion of bond authorizations from § C-9 B (1) is also instructive. "It is . . . a well-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling." (Internal quotation marks omitted.) *Lagueux* v. *Leonardi*, 148 Conn. App. 234, 242, 85 A.3d 13 (2014). The Charter's exclusion of bond authorizations is more specific than the broader language used in § C-9 B (4), and therefore "[t]o propose any other legislative action" does not override the exclusion of bond authorizations from the purview of actions which can be initiated via the power of initiative.

This intentional exclusion is not conclusive, however, because a revote on a previous bond authorization is not strictly the same as the initial issuance of a bond. Nevertheless, a reading of § C-9 as a whole reveals that it is not intended to be unlimited in scope. Although the power of initiative is an important right granted by the Charter, it is not a mechanism for citizens who disagree with the result of a valid vote to petition for a second chance on the same precise issue already voted upon by the electors. If this were the case, a relatively small number of

electors could cause a revote of acts that were already validly approved by the Town Meeting. Those in the minority of a Town Meeting or Special Town Meeting vote would have a strong incentive to immediately petition for a revote in every case involving a close vote, and it would only take a small number of those in the minority to win a new vote. Interpreting § C-9 B (4) too broadly leads to such unreasonable and inefficient results, and therefore must be avoided. See *Stamford Ridgeway Associates* v. *Board of Education*, supra, 214 Conn. 429 ("[t]he unreasonableness of the result obtained by the acceptance of one possible alternative interpretation of an act is a reason for rejecting that interpretation in favor of another which would provide a result that is . . . reasonable").[2]

Finally, although not necessarily relying on charter interpretation, cases in other jurisdictions have reached similar results. In *Custer City* v. *Robinson*, 108 N.W.2d 211, 212 (S.D. 1961), for example, the Supreme Court of South Dakota was called upon to address the propriety of a petition requesting submission to electors of a city on an action previously taken by the voters of a city authorizing issuance of bonds for the construction of a municipal hospital. The court held that there is no general right of electors to rescind by another vote action previously taken authorizing the issuance of bonds. Id., 213-14. The court further noted that "authorities . . . support [the] contention that the Legislature did not intend to set up a machinery through which the electors might reconsider at a referendum election that which they had previously approved at a bond election." (Internal quotation marks omitted.) Id., 213. Quoting from 64 C.J.S. Municipal Corporations § 1929, the court further stated that "a proposition to

[2] Further, the Charter does not expressly prohibit a petition to hold a *second* revote on the same issue. However, because § C-6 A (10) is not included in the C-9 B (1) list of items or proposals for which a Special Town Meeting may be compelled, the Charter could be interpreted to allow only one revote petition. But even if the latter interpretation prevails, a two petition rule is not substantially more reasonable than an unlimited petition rule.

issue bonds which has been adopted by the voters ordinarily cannot be resubmitted in the absence of statutory authority." (Internal quotation marks omitted.) Id., 213.

For all of the foregoing reasons, C-9 B (4) does not grant the authority to petition for a revote on a bond authorization that was previously approved by the Town Meeting. Neither the margin by which a vote passes, nor the fact that the validity of the vote is being challenged by other means, is relevant to the proper interpretation of the Charter.

TOWN ATTORNEY REMARKS FEBRUARY 17, 2015
BOARD OF SELECTMEN MEETING

Before I remark on the matter before you, I would like to make a comment about my role as Wilton Town Attorney.

As counsel to the Town, my role is to give legal counsel to all of the Boards and Commissions and to help the members and town staff to navigate through the legal issues and questions that arise in the course of business. When the opportunity arises, I assist citizens to understand the process and to help them to get from their government what they have every right to expect from it. When the Town is sued, I become an advocate, but mostly I serve as an advisor trying to help the Administration to avoid legal problems, rather than having to solve them after the fact.

Tonight, you are asking me to provide advice <u>on the law</u> concerning the ability of the petitioners to seek a re-vote of the vote taken at the September town meeting regarding the Miller-Driscoll bonding initiative. I am prepared to do that, but I want to emphasize for the citizens attending here tonight, and those watching on TV to know that I am not here to advocate for or against the bonding initiative. Tonight, I am an advisor on the law that governs Wilton.

There are really two questions you would like me to answer.

The first is whether the petition process set out in the Town Charter...the one that permits citizens to request a special town meeting...includes the ability to require the Board to call a special town meeting to vote on matters involving bonding. In a nine page legal opinion dated November 4, 2014, my office opined that it did not. That opinion was widely distributed and published in the newspaper. The opinion concluded that a citizens' initiative and the petition process does not extend to compelling an administration to call a special meeting to either...pass or defeat...a bonding resolution. In my opinion, that conclusion is unassailable and a clear statement of the law governing Wilton. (I have brought with me a short summary of the opinion for anyone in the audience who would like to read it.)

The second question for which you have asked for advice...Is: Does the BOS have the authority to initiate and hold a second round of voting on a referendum that has already been voted on and decided by the Wilton voters? In other words, can the BOS order a do-over on the very same question that the town meeting just decided?" Could the Board try to override the outcome of a town meeting by just holding another,

identical referendum with the hope that the outcome will be more to its liking?

With regard to this question, I am very comfortable advising that the BOS should not ignore the outcome of a town vote on a bonding resolution they initiated. Legally and ethically they are bound to respect and follow the legislative directives of the voters they serve. The Board should not take action to frustrate the outcome of a referendum vote.

As the Town's legal authority, I make the observation that the Town has no inherent powers of its own. The only powers that a municipal government has are the powers granted to it by the State, under the State constitution and through the legislative process. The State has passed the Home Rule Act, which empowers communities to form their own governments. Wilton exercised its powers and embodied the rules governing the Town in its Town Charter. The only powers the Board of Selectmen has are those set out in the Charter.

In this situation, the petitioners are asking the BOS to do something that does not exist as a power under the Charter; i.e. to order a second round of voting after the town meeting has already decided. From a Constitutional perspective, if the BOS were to order a re-vote, it would effectively be disenfranchising the people who voted in favor of the

bonding resolution and whose votes carried the day. Those voters could credibly argue that a re-vote would be a violation of their due process rights under the State Constitution. The procedures for bringing a bonding resolution to a town meeting vote were followed, and the town meeting has "spoken". There is no authority in the State Constitution, the Home Rule Act or the Wilton Charter that empowers the BOS to change the results of an earlier town meeting by ordering a re-vote.

As further support of my conclusion that ordering a re-vote on the same question already decided would be offensive to Connecticut law, I quote from a case decided in December, 2013 entitled the *Town of Woodbury/Bethlehem vs. Board of Education Regional School District #14*. In that case the Plaintiffs were seeking to overturn the outcome of a referendum vote approving a 63 million dollar bonding authorization. In declining the Plaintiffs' request to overturn the referendum, the Court said, "*an election is essentially and necessarily a snapshot. It is preceded by a particular election campaign for a particular period of time which culminates on a particular date, namely the official designated Election Day. In that campaign, the various parties presumably concentrate their resources, financial, political and personal on predicting a victory on that day. When that date comes, the election records the votes of those electors, and only those electors who were available to or took the opportunity to vote, whether by machine*

lever, write in or absentee ballot on that particular day. No losing candidate is entitled to the electoral equivalent of a mulligan. The snapshot can never be duplicated. The campaign, the resources available for it, the totality of the electors who voted for it, and their motivations would inevitably be different the second time around. Thus, when a court [or in this case the Board of Selectmen] orders a new election, it is really ordering a different election. It is substituting a different snapshot of the electoral process from that taken by the voting electorate on the officially designated Election Day. Consequently, all of the electors who voted at the first, officially designated election have a powerful interest in the stability of that election because the ordering of a new and different election would result in their Election Day disenfranchisement. The ordering of a new and different election in effect disenfranchises all of those who voted at the first election because their validly cast votes no longer count and the second election can never duplicate the complex combination of conditions under which they cast their ballots."

In effect, then, the Court here is substantiating my comments tonight and affirming that the Board <u>should not</u> order a new election and if they did, their doing so could very well be challenged by the winners in the first election.

Since I know that my remarks and legal conclusions are disappointing to some, I believe, as a neutral party and as an advisor to the town, I have a responsibility to the Board to respond to the argument that is pressed by the advocates of a re-vote; specifically their assertion that a re-vote is the fair thing to do. Despite what the law may provide, most certainly we want our citizens to be treated fairly.

Mr. Brennan said in his opening remarks that the Miller-Driscoll renovation project has been in the planning stage for a very long time and that many citizen volunteers have committed countless hours, weeks, and even years to this project. Staff and professionals, both hired and volunteers from the community have worked diligently to devise the best plans for the renovation. The subject of the project and its cost has been on the agendas of town committees, boards and commissions. The public has had numerous and extensive opportunities to participate and comment on both. But most importantly, the subject of going ahead with the project was properly placed on the ballot of a properly noticed town meeting that adhered to all of the democratic principles that we, as a country, subscribe to. There was a vigorous media debate and ample opportunity to vote at the town meeting, by absentee ballot, or at the reconvened meeting held a few days later. The vote was properly tallied and the bonding resolution passed. I am very comfortable concluding that throughout this process, Wilton has not only adhered to the law but

it has treated both proponents and opponents fairly. A re-vote would clearly be unfair to those who have worked for the project's success and who showed up and voted their support of it on September 23rd and 27th.

Lastly, with respect to the complaint filed with the SEEC alleging infractions of the elections laws, both counsel for the BOE and I have fully and completely cooperated with the Commission. While it would be presumptuous to predict the outcome of the complaint, I can comment that even if there were a technical violation of a campaign law, the issues are so minimal that it would be highly presumptuous for anyone to pre-suppose that it affected the outcome of the vote, which was properly noticed, properly conducted and accurately reported.

Appointments/Reappointments

A. Gilmore Bray – Wilton Energy Commission – 1 year Term

Patrice P. Gillespie – Wilton Energy Commission – 2 year Term

Bruce E. Hampson – Wilton Energy Commission – 1 year Term

Debra Thompson-Van – Wilton Energy Commission – 2 year Term

Peter Wrampe – Wilton Energy Commission – 1 year Term

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238 Danbury Road
Wilton, CT 06897

February 17, 2015

Mr. Randall S. Luther
Tai Soo Kim Partners, Architects LLC
146 Wyllys Street #1
Hartford, CT 06106

To Whom It May Concern,

I, William F. Brennan, First Selectman for the Town of Wilton, CT, and acting in my legal capacity as Owner, hereby authorize Randall S. Luther of Tai Soo Kim Partners, Architects LLC to pursue land use approvals, as required to proceed with the initial phase of the Miller Driscoll School renovation, alterations and additions project.

William F. Brennan