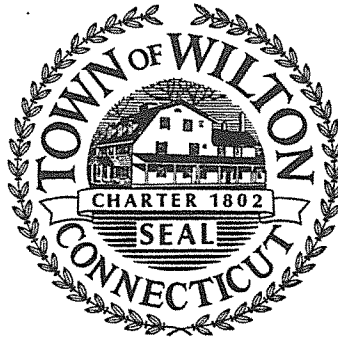


OFFICE OF THE
FIRST SELECTMAN

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William F. Brennan
First Selectman

James A. Saxe
Second Selectman

Richard J. Dubow

Michael P. Kaelin

Deborah A. McFadden

TOWN HALL
238 Danbury Road
Wilton, CT 06897

**BOARD OF SELECTMEN MEETING
MONDAY, MAY 18, 2015
MEETING ROOM B, WILTON TOWN HALL**

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

ABSENT: James Saxe

GUESTS: Town Counsel Ken Bernhard, Alex Ruskevich representing Sensible Wilton, Bruce Hampson, 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. Mr. Brennan emphasized that the meeting is a regular BOS meeting and that a Public Comment session was scheduled in the agenda. Mr. Brennan also asked that public comments be limited to 3 minutes to provide opportunity for everyone to be heard. Main focus for tonight is the legality of the petition brought to the Board of Selectmen. Motion made by Michael Kaelin to limit public comments to 3 minutes. Seconded by Deborah McFadden, unanimously carried.

A. Consent Agenda

Upon motion by Mr. Kaelin, seconded by Ms. McFadden, the consent agenda was approved as follows:

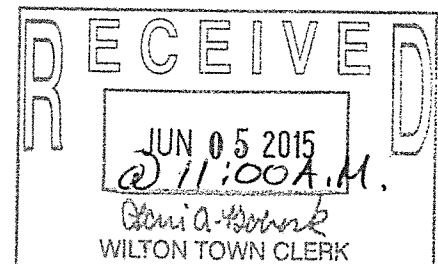
Minutes

- Board of Selectmen Meeting – May 4, 2015

Gifts

- Diana J. King – Horseshoe Pond - \$100.00
- Franklin & Clara Dunn – Horseshoe Pond - \$50.00
- R. Moskow – Fire Department Gift Fund - \$100.00

Mr. Brennan thanked all citizens for their generous gifts.



B. Discussion and/or Action

1. Consideration of a Petition requesting a Special Town Meeting be held to vote and consider the approval of an ordinance that would repeal the resolution appropriating and authorizing bonds in the amount of \$50,022,000 for planning, design, construction, renovation, equipping and furnishing of the Miller Driscoll School and related costs

Mr. Brennan stated Town Counsel has issued a legal opinion on the subject of Sensible Wilton's second petition. The legal opinion was circulated and published in the local papers and distributed to the Board of Selectmen, and will be included with the minutes. Mr. Brennan gave a brief background and thoughts on the petition before asking Town Counsel to review his legal opinion and the opinion that was circulated to the Board of Selectmen from Attorney Reiff (counsel for Sensible Wilton).

Mr. Brennan asked Town Counsel Ken Bernhard to speak regarding Sensible Wilton's Petition. Mr. Bernhard reviewed the first petition that was brought to the Town and the legal opinion that was issued. Mr. Bernhard asked the Selectmen to table any kind of action on the petition until the next meeting of the Board of Selectmen to give him time to review and assess the document that Attorney Reiff distributed regarding the second Sensible Wilton petition. Mr. Brennan asked the BOS to consider tabling the matter until a future BOS meeting at which time the BOS will have received Town Counsel's written opinion on the legal arguments raised in Attorney Reiff's opinion. Selectman Kaelin stated he would like to hear remarks from Attorney Reiff before tabling the matter. Mr. Brennan said he expected Attorney Reiff would speak during public comment session

Mr. Brennan opened the floor to public comment.

Alex Ruskevich of Calvin Road – Sensible Wilton. Gave a handout (attached) to each of the BOS members depicting the Miller-Driscoll Project Cost from March 2006 to March 2014. Mr. Ruskevich stated the project has grown to such an extent that Sensible Wilton feels the citizens are entitled to a Special Town Meeting.

Chauncey Johnstone – 30 Tory Place – Make sure the Town of Wilton and the powers that be comply with all the legal aspects of the matter.

Lauren Heinz – 34 Wildwood Drive – Concern project has grown beyond what is necessary and can be scaled down to have a good school and include all the bells and whistles that may not be needed to provide the quality education the district already has.

Stephanie Scamuffo (Senior at WHS)– 58 Ledgewood Dr – Miller Driscoll School definitely needs renovation. Kids deserve to have best education possible in best environment as when I attended Miller Driscoll. Talking about lives, not just tax dollars.

Simon Reiff (Attorney representing Sensible Wilton)– 47 Musket Ridge Road – Spoke to the requests of Sensible Wilton's petition and Town Counsel's request to table decision by the BOS. Mr. Reiff stated that if the BOS did not make a

decision that night, that they would be legally past the deadline of when the Charter required the BOS to act (Reiff cited Section C9C4a) Mr. Reiff cited a 35 day limit from when the petition was certified and stated that if the Board did not act they should halt all work on the Miller Driscoll project immediately, pending a decision on the petition.

Mr. Brennan and Town Counsel disagreed on the timing of response to the petition citing a 60 day limit. Town Counsel and Atty Reiff left meeting to review the Town Charter and Mr. Brennan continued with Public comment session.

Christina Duncan – 121 Middlebrook Farm Rd. – Appreciates work of Town volunteers, but would like to see that all work done by boards and commissions is done correctly and that accurate records are kept with regard to maintenance on town properties.

Steve Hudspeth – 6 Glen Hill Rd – Reviewed the number of signers and percentage regarding Sensible Wilton's second petition. Feels petition is a waste of time and a waste of Town effort. If there was a revote, what's to prevent asking to do again if don't agree with second vote, there would never be finality.

Gail & Ray Muskow - 16 Carriage Road – Mr. Hudspeth read statement (attached) from Mr. & Mrs. Muskow who were unable to attend.

Jim Newton (member MDBC) – 96 Valeview Road – Process ridiculous. Legal vote taken and measure passed. Time to proceed with building.

Mohammed Ayoub – 87 Millstone Road – Right of the electors ability to do anything with bonds if cannot petition Town about them? Believes Miller Driscoll does need work and offers his time and effort as he is a resident and is an architect. Mr. Brennan asks that he introduce himself to Bruce Hampson, Co-Chair, Miller Driscoll Building Committee.

Richard Creeth (member BOF) – 250 Catalpa Rd - Miller Driscoll School Project has evolved over a period of time and many meetings and hearings have taken place. Feels it's unfortunate that people are coming in at the end of the process and feels if they had been involved earlier in the process would understand where we are in the process today. Stated that every member of an elected board and committees are also tax payers of the Town and interested that tax dollars are well spent. Vote has been taken, encourage everyone to move on.

Paul Burnham – 239 Thunder Lake Road – spoke as one of the members of the Charter Revision Commission who adopted the current Charter. Never imagined that the term "ordinance" would mean anything like the repeal of a resolution of the Town Meeting. Also serves as Chairman of the DTC Nominating Committee and fear that actions of Sensible Wilton will in fact make this Town ungovernable because we rely on 99.9% of all our elected officials are volunteers and don't believe will find many volunteers if we face continued threats of litigation and FOIA requests. If litigation is necessary, may be the only way to put an end to it.

John Kalamarides (member BOF and BOF rep to MDBC) – 180 Westport Rd – People that signed had many opportunities to vote and chose not to, but signed petition. MDBC has been open in allowing Sensible Wilton to come and comment, have explained details about how this project grew to what it is today. Time to cease and desist, and let MDBC get on with project.

Nikolas Davatzes – 48 Mollbrook Drive – There was a vote, one side won, one side lost. Suggest those who are not happy get in the arena and run for public office to make changes. Suggest Sensible Wilton get off high horse and run for public office.

Bruce Hampson (co-Chair MDBC) - 47 Lambert Common – Committed approximately \$6 million of the \$50 million bond. If Sensible Wilton is successful, that will be wasted money and the Town will have to write a check to contractors, consultants that the Town has signed contracts with. Not just roof and HVAC need to be updated. Project cannot be done piecemeal, would be irresponsible. Many issues involved as this is a +50 year old building. Process approved by voters is most efficient way to completed updates needed for this facility. Any delay in the process will increase cost of project and will lose reimbursement from the state. Job should move forward as voters approved.

Bruce Likly (member BOE) – 35 Hunting Ridge Lane – Do my best job I can for this Town and this school district. Believe fellow members of the BOE, BOF and BOS do the same very thing. Frustrating that many faces in audience today have not been to many board meetings. Miller Driscoll School project was on docket before I became a member of the BOE. Participation is key. Cease and desist and participate in the process going forward. Assistance will be greatly valued.

Ed Papp – 28 Walnut Place – Helped collecting signatures. Many citizens stated that they did not know about the vote. Hoped meeting would be scheduled with a regular vote not a special meeting. Felt citizens were not informed about the vote and that was not well advertised as indicated. Don't understand how project rose from 32M to 50M so quickly. If waste money on Miller Driscoll, where will money for other projects come from?

Mr. Brennan thanked all citizens for participating, and closed the floor to public comment.

Ken Bernhard – Reviewed Charter with Attorney Reiff and have agreed to disagree with what the Charter says. Relying on provision in charter that states the BOS shall set a date for a public hearing on a proposed ordinance within 60 days after one of the following events: The BOS receives a valid petition pursuant to C9 requesting a special town meeting to adopt an ordinance. Believe that is the prevailing point. Admittedly there is some confusion.

Mr. Brennan reopened the floor to public comment at the request of Mr. Hannah who wished to speak.

Attorney Reiff – Reviewed exact language of provision in Charter – section **c9c4a**. Attorney Reiff believes the deadline turns on whether the BOS fails to or does not have the power to adopt the proposal made by the petition. He states

the BOS has a legal duty to schedule the matter with a special town meeting within 35 days. Petition filed with Town Clerk on April 1, 2015 and certified within 10 days as valid. By calculation today is deadline to respond to the petition.

Mr. Kaelin asked for clarification from Attorney Reiff on what is being asked in the petition by Sensible Wilton. How is the second petition different from the first? Mr. Kaelin states this boils down to a parsing of words and the definition of "ordinance" versus "bond authorization" in the Charter. First petition calls for Town Meeting to approve the authorization of bonds and the second petition asks to call a Town Meeting to repeal an authorization of the bonds. No one on the Charter Commission meant for "bond authorization" and "adopting an ordinance" to mean the same thing.

Paul Hannah – 11 Shagbar Place – Mr. Hannah read section C33 paragraph 3 of the Charter with reference to Town Meeting to approve bonding. Encourage BOS to do whatever needs to be done to refute the petition.

Mr. Bernhard stated that in view of what transpired during the meeting and Mr. Reiff's comments regarding the 35 and 60 days, he withdrew his request to review Mr. Reiff's opinion and in view of Selectman Kaelin's opinion, that the BOS should decide if they want to refer to a Special Town Meeting.

Mr. Brennan closed the floor to public comment and asked for the Board's thoughts on the matter of the petition.

Mr. Dubow clarified that by taking no action today we would comply with response within the 35 days. Misrepresentation and untruths needs to be corrected with regard to the Miller Driscoll School Project. In favor of taking no action petition.

Mr. Kaelin in favor of voting on whatever it will take to put a stop to this as soon as possible.

Ms McFadden thanked all that spoke on both sides of the issue. Asked that all be respectful with comments and requests of the Building Committee as they are all volunteers. Once again need to shine a light on voter turnout. In favor of taking no action on petition.

Mr. Brennan stated that the Board is not in favor of putting off making a decision and indicated for the record that the Board has discussed and heard from citizens and allowed comments from all in attendance, as well as comments from Attorney Reiff and Town Counsel Bernhard and have elected to take no action on the matter because the Board does not have the authority to act on the petition.

2. FY15 Financial Status Report – S. Dennies
Sandy Dennies gave a review of the FY15 Financial Status Report (memo attached).
3. Miscellaneous Other Business

Mr. Brennan stated that all is set for the Memorial Day Parade.

Announced fundraiser earlier this week to raise funds to repair and move the "Valley Forge Washington" sculpture piece donated to the Town by the Proctor and Keiser families. Thanked those that have initially offered contributions.

C. Reports

First Selectman's Report

Will be absent for June 1, 2015 Board of Selectman meeting. Jim Saxe, Second Selectman will Chair.

Selectmen's Reports

Deborah McFadden – Presentation on "Valley Forge Washington" sculpture to the press earlier this week was excellent. Thanked First Selectman Brennan for bringing sculpture piece to Town. Attended Historical Society event this weekend. Met with Troop 20 and covered the citizenship in community badges. Was very impressed with Troop 20's knowledge of the Town. Making progress on next phase of NRV. In fundraising mode for next phase of the trail and about half way to goal. Also attended the CT Tree Festival.

Michael Kaelin – Attended Norwalk/Wilton CT Tree Festival. Celebrated partnership between the Town of Wilton and City of Norwalk, as together we are a combined Tree City USA.

Dick Dubow – None.

- D. Executive Session – Motion made by Mr. Brennan to enter Executive Session to discuss terms of Settlement of Pending Heart and Hypertension claim at 9:18 PM. Motion seconded by Mr. Dubow, unanimously carried.

Sarah Taffel, Director, Human Resources, Labor Relations & Administrative Services asked to join discussion in Executive Session.

Out of Executive Session at 9:38PM.

No action taken.

- E. Adjournment – Having no further business, the meeting was adjourned at 9:40 p.m.



Jacqueline Rochester, Recording Secretary

MEMORANDUM

TO: Wilton Board of Selectmen

FROM: G. Kenneth Bernhard, Esquire

RE: Sensible Wilton Ordinance Petition

DATE: May 6, 2015

QUESTION

Does the Wilton Town Charter and applicable law permit the use of the power of initiative to petition for an ordinance repealing the bond authorization for the Miller-Driscoll School renovation project?

SHORT ANSWER

No. The Town Charter does not contemplate the use of the power of initiative to repeal the bond authorization for the Miller-Driscoll School renovation project by ordinance.

FACTS

A group of Wilton electors have circulated a petition for the purpose of compelling a Special Town Meeting to vote on a proposed ordinance. The ordinance would have the effect of repealing a bond authorization for the Miller-Driscoll School renovation project, which was previously approved by the Town Meeting in September 2014. A previous petition attempted to force a revote on the bond authorization, but it was invalid because the Charter does not grant electors the authority to petition for a revote on a bond authorization which was previously approved by the Town Meeting.

The new petition provides in relevant part:

SUBJECT: We, the undersigned electors and those of us qualified to vote in Town Meetings of the Town of Wilton, hereby Petition that a Special Town Meeting be held to consider and vote the following ordinance, without amendment, in full compliance with State Election Law:

The resolution appropriating and authorizing bonds in the amount of \$50,022,000 for planning, design, construction, renovation, equipping and furnishing of the Miller-Driscoll School and related costs is hereby repealed; provided, however, that the Town will pay all legal obligations to third parties, lawfully incurred, including any arising from bonds or contracts already made and entered into by the Town prior to such repeal.

ANALYSIS

The question of whether Town electors may petition for repeal of a bond authorization by ordinance must be addressed by referring to the Wilton Town Charter.¹ “[A] charter bears the same general relation to the ordinances of the city [or town] that the constitution of the state bears to the statutes.” (Internal quotation marks omitted.) *Palermo v. Ulatowski*, 97 Conn. App. 521, 524 (2006). “The proposition is self-evident, therefore, that an ordinance must conform to, be subordinate to, not conflict with, and not exceed the charter. . . . Ordinances must not only conform with the express terms of the charter, but they must not conflict in any degree with its object [A]n ordinance violative of or not in compliance with the city [or town] charter is void.” (Internal quotation marks omitted.) *Id.*, 525. Accordingly, the Board of Selectmen is not required to act on a petition for a Special Town Meeting to enact an ordinance if the proposed ordinance is violative of or not in compliance with the Charter. *Id.*; see also 62 C.J.S. Municipal Corporations § 454 (“Only such an ordinance, by-law, or measure may be submitted to the electors of a municipal corporation, as the municipal legislative body has the power to enact or adopt.”).

“In construing a [town] charter, the rules of statutory construction generally apply.”
(Internal quotation marks omitted.) *Stamford Ridgeway Associates v. Board of Education*, 214

¹ “[T]he enactment of ordinances by initiative and referendum has been recognized as a matter of local interest.” *Windham Taxpayers Association v. Board of Selectmen*, 234 Conn. 513, 532 (1995). Thus, pursuant to Connecticut’s Home Rule Act, the present question is “most logically answered locally, pursuant to a home rule charter, exclusive of the provisions of the General Statutes.” *Id.*, 534.

Conn. 407, 423 (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 (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.

Pursuant to § C-9 B (2) of the Charter, Town electors have the general right to petition the Board of Selectmen to hold a Special Town Meeting “[t]o consider a proposed ordinance, an amendment to an existing ordinance or a proposal to repeal an existing ordinance.” Section C-9

G provides that “[i]f a Special Town Meeting is requested by petition to adopt an ordinance, all further action on such proposal shall be taken in accordance with Article VI concerning ordinances.” Turning to Article VI, the first section provides: “Ordinances may be created, amended, repealed or overruled in accordance with the procedures of this article, Article III and Article IV. An ordinance may be amended or repealed only by another ordinance.” Charter, § C-21.

There are other provisions in the Charter related to the adoption of ordinances, but there are none which expressly limit or expand the definition of “ordinance” as it pertains to bond authorizations. Nor does the Charter directly define the term “ordinance.” Turning to other sources, Black’s Law Dictionary (10th Ed. 2014) defines the word broadly as “[a]n authoritative law or decree.” Our Supreme Court has referred to ordinances in the more narrow sense, stating that “[a]n ordinance is a legislative enactment of a municipality . . . [which] designates a local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality.” (Citation omitted; internal quotation marks omitted.) *Blue Sky Bar, Inc. v. Stratford*, 203 Conn. 14, 19 n.7 (1987). The latter definition does not seem to extend to administrative, as opposed to legislative actions, and includes the additional condition that an ordinance prescribe general, uniform, and permanent rules of conduct, as opposed to single, specific acts. Nevertheless, there is no uniform and binding definition.

Because a valid ordinance cannot conflict with the Charter; *Palermo v. Ulatowski*, supra, 97 Conn. App. 524-25; it is necessary to review all relevant Charter provisions, especially those governing bond resolutions. Importantly, § C-33 A provides that “[t]he Board of Selectmen, *and only the Board of Selectmen*, shall have the power to propose the issuance of bonds to the Town

Meeting.” (Emphasis added.) Section C-33 B then requires the Board of Selectmen to refer the proposal to the Board of Finance before presentation to the Town Meeting, further stating that “[t]he Town Meeting may not amend any such proposal for the issuance of bonds.” Section C-33 C then provides that “[i]mmediately following the adjournment of the meeting of the Town Meeting at which the Board of Selectmen’s proposal for the issuance of bonds is to be considered, the voters shall have the opportunity to vote for or against such proposal by machine voting.”

Regarding the mechanism by which bond authorizations are enacted, § C-33 C states: “*The resolution* shall be adopted if approved by a majority of those voting and shall otherwise be rejected.” (Emphasis added.) Thus, § C-33 contemplates that bond authorizations will be proposed by resolution, originating from the Board of Selectmen, then going to the Board of Finance, and finally to the Town Meeting. It does not provide for the proposal of bond authorizations by ordinance (see § C-33 C) or by petition. See Charter §§ C-33 A (only Board of Selectmen have power to propose issuance of bonds) and C-9 B (1) (enumerating five items or proposals which may be considered through via power of initiative but excluding bond authorizations exceeding one year in term (§ C-6 A (2))). The question then becomes whether the Charter permits electors to use the power of initiative to *repeal* a validly enacted bond authorization via ordinance, even though the same procedure may not be used to propose the issuance of bonds in the first instance. For the following reasons, the answer is “no.”

Generally, the power of a municipal corporation to repeal an ordinance or a resolution is, by necessary implication, as broad as the power to enact it. *Madison v. Kimberly*, 118 Conn. 6, 11 (1934); 62 C.J.S. Municipal Corporations, § 435 (b) (1). “Conversely, a municipal corporation has no implied power to repeal an ordinance [or resolution] unless legislative power

was delegated to it to enact the original ordinance.” Id., p. 835. There are further limitations on the implied power to repeal, such as where the ordinance or resolution to be repealed is contractual in nature, or where such authority is inconsistent with a charter or statutory provision. 62 C.J.S. Municipal Corporations, §§ 407 and 435 (b) (2). In this case, the proposed ordinance attempts to draw its authority from a power which would be insufficient to enact the subject bond resolution in first instance, and thus there is no implied right to repeal it. Of course, the Charter could grant the power to repeal a bond authorization via ordinance, but it would be improper to glean such a power by implication absent an express provision to the contrary.

A complete reading of the § C-33 bonding procedures reveals a carefully prescribed process for proposing and implementing bond resolutions. Prior to passage of such a resolution, it is the Board of Selectmen and Board of Finance which must set its proposed terms, which cannot be amended by the Town Meeting. Charter, § C-33 B. After a resolution is passed by the Town Meeting, the Charter empowers the Treasurer and First Selectman to take further *administrative* action to implement it, but does not provide for further legislative input by the Town Meeting, by ordinance or otherwise. Consequently, the bonding procedures carve out an important role for the Town Meeting in voting on a bond resolution after it is proposed by the Board of Selectmen, but once the Town Meeting votes to pass it, any implementation is left to the Town officials as prescribed by the Charter. See § C-33 D-F. The bonding procedures are meant to be complete, and the failure to include a role for ordinances or the power of initiative is assumed to be intentional.

In light of these provisions, it is clear that the general right to petition for ordinances does not necessarily grant the right to enact an ordinance on any subject. All ordinances “must not only conform with the express terms of the Charter, but also must not conflict in any degree with its

object. *Palermo v. Ulatowski*, supra, 97 Conn. App. 525. If electors were able to use the power of initiative to circumvent the carefully prescribed bonding resolution process, it would create a role for ordinances in bonding procedures where none was intended, and interfere with the administration of previously authorized resolutions.

An interpretation permitting repeal of the authority to enter into bond obligations is also disfavored when third parties have relied on the existence of such authority. In *Custer City v. Robinson*, 108 N.W.2d 211 (S.D. 1961), 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 authorizing the issuance of bonds for the construction of a municipal hospital. *Id.*, 212. On the basis of that authorization, the city issued general obligation bonds, collected taxes, paid three bonds, spent money on architectural services, and spent money from its general fund. *Id.* The court held that there is no general right of electors to rescind by another vote action previously taken authorizing the issuance of bonds, citing the proposition 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. The court also cited the general rule that “a proposition to 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, Quoting 64 C.J.S. Municipal Corporations § 1929.

As of this date, the Town has already expended more than \$2.3 million in pre-construction costs and entered into binding contracts in reliance on the bond authorization. Absent a clear provision to the contrary, it is not reasonable to read the Charter as permitting the repeal of a bond authorization at this stage. 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”). Repeal at this time could also raise constitutional concerns, since the Contract Clause of the United States Constitution prevents a municipality from passing an ordinance that impairs the obligation of contract. U.S. Const., art. I, § 10 (“[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts”); 5 McQuillin, *Municipal Corporations* § 19:68 (3d Ed.). Construing the Charter to permit such contracts to be put in jeopardy through the initiative process is disfavored, as “statutes [and ordinances] are to be read so as to avoid, rather than to create, constitutional questions.” *In re Valerie D.*, 223 Conn. 492, 534 (1992).

If enacted, the proposed ordinance would also improperly overrule administrative actions undertaken in reliance on the resolution. This conflicts with the general rule that “[t]he power of initiative or referendum usually is restricted to legislative ordinances, resolutions, or measures, and is not extended to executive or administrative action.” (Footnotes omitted.) 5 McQuillin, *Municipal Corporations* § 16:53 (3d Ed.). In accordance with this principle, § C-9 B (3) of the Charter only permits the power of initiative to be used “[t]o overrule any *legislative action* of the Board of Selectmen.” (Emphasis added.) The proposed ordinance is partially legislative in that it prospectively limits the power of the Town, but it is also administrative because it mandates the disaffirmance of existing contracts entered into by administrative officials of the Town. See *Buckeye Community Hope Foundation v. Cuyahoga Falls*, 697 N.E.2d 181 (Ohio 1998) (city council’s decision to approve site plan constituted administrative action, and thus could not be challenged by referendum); *Hopping v. Richmond* 170 Cal. 605, 150 P. 977 (1915) (“To allow [a referendum] to be invoked to annul or delay executive conduct would destroy the efficiency

necessary to the successful administration of the business affairs of a city. In many cases it would entirely prevent the exercise of the executive power necessary to carry out the acts determined upon by the legislative department.”).

Finally, the clause in the proposed ordinance purporting to require the Town to pay all legal obligations to third parties arising from the bond authorization does not cure the aforementioned deficiencies. Even if the proposed ordinance would somehow permit the fulfillment of all the Town’s existing contractual obligations under the resolution, it would still have the effect of repealing a bond authorization that was previously passed by the Town Meeting, which conflicts with the Charter.

In sum, although the power of initiative continues to be an important right granted by the Charter, it is not unlimited. When an ordinance proposed via the power of initiative conflicts with the terms of the Charter, as is the case here, the Town is under no obligation to act on the petition.

From: Ray [mailto:rmoskow01@snet.net]
Sent: Sunday, May 17, 2015 1:59 AM
To: Hudspeth
Subject: Text of Letter to be Read at Monday Evening' Meeting

Letter from Gail and Ray Moskow, Carriage Road

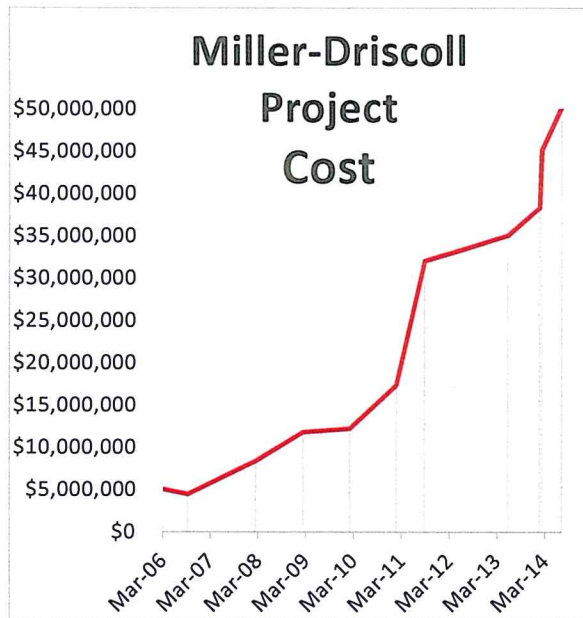
"We apologize that family commitments keep us away from Wilton and unable to stand before you to speak. We thank Mr. Hudspeth for his willingness to read our following message:

"We have been active and involved residents of this community for 45 years. We came here strongly influenced by superior education facilities and systems. We feel honor bound and dedicated to leaving that legacy here for others as we found it.

Nearly 30 of our elected and key volunteer officials have worked on the Miller Driscoll proposal. We know many of those people; we have complete faith and trust in their judgement and we recognize their 100% endorsement of the Plan. We have elected and selected these people and they have managed and led our Town to admirable heights.

We believe that a small group of dissident citizens, obviously obsessed with disrupting the Town's fair and conclusive vote, are doing damage to our community. They are "grasping at straws" to inhibit what has been a long, detailed and carefully thought out proposal. Their continued efforts will further divide our population with distorted claims of cost savings, unfounded assumptions of alternatives and lingering threats of delaying and costly public actions. The vote is over; we are wasting time and money. For the benefit of our children, we need to move on with the Miller Driscoll proposal as approved. We urge everyone's support.

Thank you for listening to our message. Gail and Ray Moskow, 16 Carriage Road"



<u>Date</u>	<u>Cost</u>	<u>Source</u>
3/16/06	\$5,000,000	Wilton Bulletin, page A10 As More Building Projects Loom School Officials Adopt Capital Improvements Protocol “...what Dr. Gary Richards outlined were projects coming up for the following two fiscal years, including a \$5-million expansion project for Miller-Driscoll slated for 2007-08...”
9/21/06	\$4,375,000	Wilton Bulletin, page A1 Board of Education to Vote – Expansion Preferred at Miller-Driscoll versus Comstock “...The cost of adding 15,415 square feet onto Miller-Driscoll is estimated at \$4,375,000...”
2/21/08	\$8,300,000	Wilton Bulletin, page A1, Nearly \$38 Million on Schools’ Agenda “...For the fiscal year 2009-2010, the school board has requested \$7.5 million for this [Miller-Driscoll] project, as well as \$800,000 for skylight replacement and window replacement...”
2/19/09	\$11,700,000	Wilton Bulletin, page A3, Schools Present Capital Plan “...\$7.5 million planned for an expansion project at Miller-Driscoll, currently slated for the 2011-12 fiscal year...the five other projects...sprinkler system (\$1.2million) ...skylights (\$300,000)...windows (\$500,000)...steel siding (\$1 million)...roof (\$1.2 million)...”
2/11/10	\$12,160,000	Wilton Bulletin, page A3, Schools Need \$14 Million “...Needing an estimated \$12.16 million in capital work over the next four years, Miller-Driscoll has the most needs for a facility in the district...”
2/4/11	\$17,319,284	S/L/A/M Collaborative presentation
9/6/11	\$29,000,000 - \$32,000,000	Wilton Patch, Exploring Options to Upgrade Miller-Driscoll “...the first two plans were set to cost the town \$29 million, and the building addition plan would cost Wilton \$32 million...”
6/3/13	\$32,000,000 - \$35,000,000	Miller-Driscoll Building Committee minutes “...Due to cost escalation from the time of the 2011 \$29M estimate to the start of construction, [First Selectman] Bill Brennan authorized the Building Committee to use \$32M-\$35M as the project cost for RFP purposes...”
2/2/14	\$38,300,000	Board of Selectmen minutes
2/18/14	\$45,089,000	Board of Selectmen minutes
7/21/14	\$50,220,000	Board of Selectmen minutes

From: Ray [mailto:rmoskow01@snet.net]
Sent: Sunday, May 17, 2015 1:59 AM
To: Hudspeth
Subject: Text of Letter to be Read at Monday Evening' Meeting

Letter from Gail and Ray Moskow, Carriage Road

"We apologize that family commitments keep us away from Wilton and unable to stand before you to speak. We thank Mr. Hudspeth for his willingness to read our following message:

"We have been active and involved residents of this community for 45 years. We came here strongly influenced by superior education facilities and systems. We feel honor bound and dedicated to leaving that legacy here for others as we found it.

Nearly 30 of our elected and key volunteer officials have worked on the Miller Driscoll proposal. We know many of those people; we have complete faith and trust in their judgement and we recognize their 100% endorsement of the Plan. We have elected and selected these people and they have managed and led our Town to admirable heights.

We believe that a small group of dissident citizens, obviously obsessed with disrupting the Town's fair and conclusive vote, are doing damage to our community. They are "grasping at straws" to inhibit what has been a long, detailed and carefully thought out proposal. Their continued efforts will further divide our population with distorted claims of cost savings, unfounded assumptions of alternatives and lingering threats of delaying and costly public actions. The vote is over; we are wasting time and money. For the benefit of our children, we need to move on with the Miller Driscoll proposal as approved. We urge everyone's support.

Thank you for listening to our message. Gail and Ray Moskow, 16 Carriage Road"