



Town Hall 101 Field Point Road P.O. Box 2540 Greenwich, CT 06830
Tel: (203) 622-7876 Fax: (203) 622-3816

MEMORANDUM

TO: Peter J. Tesei, First Selectman
John Toner, Selectman
Sandy Litvack, Selectman

FROM: John Wayne Fox, Town Attorney 

DATE: August 20, 2019

RE: Greenwich Plaza

In conjunction with consideration being given to the possibility of entering into a Development Agreement with Greenwich Plaza Inc., questions were previously raised as to whether the Town could market the air rights in question to other potential bidders and whether the Town is required to market the air rights to other potential bidders prior to conveying the air rights to Greenwich Plaza. These questions have previously been raised and answered. Simply put, the Town has the right to publicly market the air rights to potential bidders but is not required to do so.

In the most recent meeting of the Board of Selectmen, there arose a related and follow-up question. Simply put, there is a concern that we would expose the Town to

litigation, which could then result in delay, if we fail to put the prospective purchase out to bid.

Connecticut General Statute Section 7-148v grants municipalities the right to establish requirements for competitive bidding and the award of any contract for the purchase of any real or personal property by the municipality. The Purchasing Policy Manual of the Town of Greenwich, Section 4.1, has a general description of the requirements for a public request for bid. It does not appear to address real property. There is nothing in the statutes, Charter, or Purchasing Policy that requires a real estate sale to go to public bid. The only exception to this being the sale of real estate acquired by tax foreclosure or in lieu thereof, as provided in Section 2-35 of the Charter. I do not believe that the Town's Purchasing Policy is applicable to a sale of air rights. By its terms, the policy only applies to the Town's purchases of services or goods. In this case, the Town is not purchasing goods or services but selling an asset which it is authorized to do pursuant to Section 7-148(c)(3) of the Connecticut General Statutes.

In the world in which we live, which is becoming more litigious on a daily basis, we cannot predict litigation that may be initiated against us nor can we control it. While litigation most likely will result in delaying the process, it is my opinion that we should proceed in an orderly fashion in accordance with applicable legal requirements and deal with litigation when, or if, it arises.

I would also point out for your information that Section 7-163e(a) of the Connecticut General Statutes requires a municipality to conduct a public hearing on the sale, lease or transfer of real property by the municipality prior to final approval of such sale, lease or transfer. It is my opinion that it makes sense to wait until we have an agreement that is closer to final form before presenting it to a public hearing. I expect the terms of the agreement may well undergo change as it makes its way through various boards.

JWF/pac