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TO: Randall Skigen, President, Board of Representatives

FROM: Michael Toma, Assistant Corporation Counsel MST

DATE: August 4, 2017

RE: Lease Between City of Stamford and Woodway Country Club

You have asked whether the lease agreement of 2007 between the City and the Woodway Country Club was properly approved. According to the Board of Representatives Resolution #3139 of April 4, 2007, it was approved pursuant to C1-50-3 of the Charter. It was not approved pursuant to C6-120-3 of the Charter. The resolution approved a "lease" for a .2 acre portion of City-owned land for use by the Club as a golf tee, subject to certain conditions, for a term of five years.

In my opinion, the lease was properly approved pursuant to C1-50-3 of the Charter, and did not need to be approved pursuant to C6-120-3 of the Charter, as the latter section, by its terms, does not apply to leases. The word "lease" does appear in C1-50-3, which is the section that is cited in the resolution of approval. This section provides, in pertinent part: "No purchase or lease of real estate by the City and no sale or lease of any real estate belonging to the City shall be valid unless approved by the Mayor, the Planning Board, the Board of Finance and the Board of Representatives." As this section specifically applies to leases, it was the correct section under which to approve the lease.

The word "lease" also appears in C2-10-2(10): "The Board of Representatives shall have the following powers: to approve the purchase, sale or lease of real property." It is a reasonable interpretation of the Charter as a whole that when a section thereof has been intended to apply to leases, it has specifically so stated.

In contrast, C6-120-3 of the Charter reads, in pertinent part: "Property consisting of 20,000 square feet or less, owned by the City and used for park purposes may be sold or otherwise transferred after written approval of the Mayor, the Planning Board, the Board of Finance and by a two-thirds' vote of the entire membership of the Board of Representatives."

By its terms, this section applies to property that is "sold or otherwise transferred." The word "lease" does not appear in this section. Therefore, a "transfer" pursuant to C6-120-3 means something other than a lease.

"Transfers" of property generally constitute conveyances in which the exclusive interest to property (in legal terminology, the "fee," or the "estate") is transferred. Besides an outright sale of property, where all interest is absolutely transferred, there exist other transfers which are less absolute, such as a conditional fee simple, which conveys an interest forever as long as one or more conditions imposed by the deed's grantor does not occur; or, a fee tail, which conveys an estate which, upon the death of the grantee, is transferred to his or her heirs, if any, otherwise to revert to the grantor; or, a life estate, which lasts for the natural life of the grantee, and then may revert to the grantor or a third party. Typically, the grantee in the above transfers enjoys exclusive and unfettered possession in the property, and has the right to sell or lease his or her interest in the property. However, the Club does not enjoy such rights, further supporting the conclusion that the agreement with the City was a lease and not a transfer.

The particulars of the lease between the City and the Club demonstrate that the agreement did not involve a "transfer" as that term is used in C6-120-3. The lease, at Section 10, requires that the Club not use the leased premises in a manner inconsistent with the lease [golf tee], indicating that it was not given unfettered rights to use the property for any lawful purpose. The Club further agreed, at Section 4, to maintain the balance of the City's 11.65 acre property for public, passive recreational use at the Club's sole cost and expense, which is a condition imposed on the Club that would not normally be included in a "transfer" of property. Finally, at Section 14, the Club agreed not to make any substantial improvements or changes to the leased premises without the prior written consent of the City, indicating again that the Club was not given unfettered rights to use or alter the property. Such provisions are generally inconsistent with a "transfer" of property, but are common in "leases," and so the nature of the agreement between the parties clearly has the trappings of a "lease" rather than a "transfer."

The above interpretation of the interplay between C1-50-3 and C6-120-3 comports with well-established principles of statutory construction. When courts interpret statutes, they are required to apply the more specific statute relating to a particular subject matter instead of the more general statute that otherwise might apply in the absence of the specific statute. "The provisions of one statute which specifically focus on a particular problem will always, in the absence of express contrary legislative intent, be held to prevail over provisions of a different statute more general in its coverage." *Housatonic Railroad Co. v. Commissioner of Revenue Services*, 301 Conn. 268, 302 (2011). Here, the Charter section specifically focusing on leases, C1-50-3, controls over the Charter section that does not specifically do so, C6-120-3.