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July 24, 2023

VIA EMAIL

Deborah Carney, President
Charlestown Town Council
4540 South County Trail
Charlestown, RI 02813

Dear Ms. Carney:

We were contacted last week by Ruth Platner, a member of the Town's Planning Commission, about an item that you have placed on tonight's Town Council agenda, entitled "Discussion and potential action to Petition the Rhode Island Superior Court for a Declaratory Judgment regarding the legality of Charlestown having an elected Planning Commission." We understand that you proposed this item for the agenda in light of a recent discussion by the Town's Charter Revision Advisory Committee. Because we believe the agenda proposal raises both procedural and substantive concerns, we are writing to encourage the Council to postpone any discussion of this matter until Council members and other interested parties have an opportunity to fully deliberate and weigh in on the matter. This will allow for a more informed determination as to the value and the propriety of the planned petition, both of which we question, and also potentially lead to a realization that the agenda item should simply be shelved.

To summarize the impetus of the petition: we understand that concerns have been raised about a long-standing provision in the Town Charter providing for election by the voters of the Planning Commission members. It has been pointed out that R.I.G.L. §45-22-2 appears to require that planning commission members of any municipality be appointed, not elected. It is this purported conflict between the Town Charter and the state law that has prompted your suggested court action to resolve it.

Because we have had a relatively short time to review this, our views must be considered preliminary, but we believe Ms. Platner has raised sufficiently valid concerns to call into question the plan of action proposed by your agenda item request.

Procedurally, we question whether, as a matter of law, a declaratory judgment is a proper vehicle by which to seek a resolution of this issue, as no challenge has been made by an affected party to the makeup of the commission. We similarly question your expectation, as recounted in your letter requesting placement of this item on the agenda, that a court would be able to "uphold and confirm previous votes taken by the Planning Commission" if the court were to find that the commission is illegally constituted.

More to the point, we believe a very recent R.I. Supreme Court decision, in a case with striking similarities to this situation, appears to have substantively addressed and definitively

answered the question you have raised. That case, *Purcell v. Johnson* (No. 2023-26-M.P., decided July 18, 2023), also involved an electoral dispute dealing with a conflict between a state law and a Town Charter provision. In *Purcell*, the dispute centered around the process for filling vacancies on the Chariho School Committee. To summarize the outcome simply, the Court held that the Charter provision, being both more recent and more specific than the state law, superseded that law when the Charter – and thus, the Charter provision at issue – was ratified by the General Assembly. The parallels here are obvious. We would strongly encourage Town Council members to carefully review the Court’s decision before embarking on a preemptive and potentially expensive litigative effort to undermine a Charter provision that, for decades, has given voters a say in the makeup of a municipal commission.

Ms. Platner has pointed out to us that the conclusion that this Charter provision prevails over the state law also comports with the position that the Town took over a decade ago in a case where the composition of the Charlestown Planning Commission was challenged (but settled without a court ruling). *Town of Charlestown v. Town of Charlestown, Zoning Board of Review*, C.A. No. WC-2010-0764. The arguments provided by the Town Solicitor in that case in support of the proposition that the Planning Commission was “validly composed” presciently mirror the legal rationale laid out by the Supreme Court in the *Purcell* case.

Under all these circumstances, tonight’s agenda item strikes us as a divisive and unnecessary undercutting of the Town Charter’s explicit and more democratically oriented decision to allow voters, not a public body, to determine the makeup of the town’s Planning Commission. Of course, with a charter review committee currently meeting, that body certainly has the ability to recommend a Charter amendment to revise the current process and instead provide for the appointment, rather than election, of this commission. The voters can once again then have their say in the matter. But there does not appear to be any reason for the Town Council to gratuitously interject itself into this matter and seek to undermine voters’ rights, especially since it would appear that the state Supreme Court has serendipitously answered the question any concerned Council members may have about the Charter provision.

Thank you in advance for considering our views about this, and feel free to let me know if you have any questions about it.

Sincerely,



Steven Brown
Executive Director

cc: Charlestown Town Council
Peter Ruggiero, Town Solicitor
Catherine Graziano, Chair, Charter Advisory Committee
Jeffrey Allen, Town Administrator
Ruth Platner