

2. The Charlestown Planning Commission is validly composed.

In 1972, the General Assembly enacted a comprehensive statutory scheme concerning the composition of a local planning board or commission.<sup>1</sup> The general scheme, however, specifically exempted communities operating under a home rule charter from compliance with the composition requirements. (Id. at fn 8). Since 1963 the Charlestown Town Council served as the Charlestown Planning Commission. The Town Council continued in that role until 1981 when the Charlestown voters approved the Town's first Home Rule Charter. The Town's Charter was ratified by the General Assembly that same year.<sup>2</sup> The 1981 Charter provided that the Planning Commission for the Town was to be composed of a body of five (5) regular members and two (2)

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<sup>1</sup> § 45-22-1. **Establishment of a planning board or commission - Home rule charter exempt**

All cities and towns shall, by ordinance, establish a planning board or commission under the provisions of this chapter. Any city or town operating under a home rule charter which provides for the establishment of a planning board or commission may continue under the provisions of that charter, except that the provisions of § [45-22-7](#), governing the formulation and adoption of a comprehensive plan and the duties of a planning board or commission, apply to all cities and towns. (P.L. 1972 ch. 204 §2)

§ 45-22-2. **Appointing authority**

In cities and towns having an elected mayor or administrator, members of the planning board or commission are appointed by the mayor or administrator with the consent of the city or town council and, in other towns, members are appointed by the town council. Cities and towns operating under a home rule charter may continue the appointment of members in the manner established under that charter. (Id.)

§ 45-22-3. **Membership - Continuation of present membership**

(a) A planning board or commission consists of no less than five (5) members, and appointments are made for terms of a length that the terms of no more than one third (1/3) of the members of the board or commission expire each year. Any vacancy occurring in the membership of a planning board or commission shall be filled by the appointing authority for the remainder of the unexpired term. Any member of a planning board or commission may be removed from office by the appointing authority for due cause, following a public hearing.

(b) Vacancies to the planning board or commission occurring after May 4, 1972, shall be filled in the manner prescribed in this section, except as provided in § [45-22-1](#) in cities or towns operating under a home rule charter.

(c) The Hopkinton town council has the right to appoint two (2) alternate members to the Hopkinton planning board and the Exeter town council may appoint two (2). (Id.)

<sup>2</sup> See P.L. 191 ch 15 §1,2. Appendix 17. (Exhibit 3).

alternate members all elected at large in a general election.<sup>3</sup> These provisions of the 1981 Charter regarding the composition of the Planning Commission remain in place today.

Whalerock now argues that the provisions of the Charlestown Town Charter regarding the elected composition of the Planning Commission are inconsistent and incompatible with certain provisions of Chapter 22 of Title 45 as enacted in 1972 regarding the composition of a local planning board or commission. Whalerock argues further that the provisions of the General Laws trump the alleged inconsistent provisions of the Charlestown Town Charter regarding the elected composition of the Planning Commission. However, Whalerock properly admits in their legal memorandum at page 14 and does not dispute that the General Assembly ratified the Charlestown Charter in 1981 which included the provision for the election of the Planning Commission members after the enactment of the general statute in 1972 regarding the composition of a local planning board and commission.

Questions of statutory interpretation are reviewed *de novo*. Warwick Housing Authority v. McLeod, 913 A.2d 1033, 1036 (RI 2007).”When a specific statute conflicts with a general statute, our law dictates that precedence must be given to the specific statute.” Id. The 1981 ratification of the Charlestown Town Charter is a specific statute entitled the “Charlestown Charter Ratification Act.” Id. at fn 9. Section 1 of the ratification act states “[a]ll election procedures in the said charter of the town of

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<sup>3</sup> There shall be a Planning Commission composed of five (5) members. They shall be elected at large on a nonpartisan basis for terms of six (6) years, except that the initial elections shall be for terms of two (2) members for two (2) years, two (2) members for four (4) years and one (1) member for six (6) years, respectively. In addition there shall be two (2) alternate members elected for terms of two (2) years; and any vacancy on the Commission shall be filled by one (1) of the alternates until the next general election. When an alternate resigns or is appointed to fill a vacancy on the Commission, the Council may appoint a replacement alternate to serve until the next general election. All members shall serve until their respective successors have been elected. The Town Administrator and the Director of Public Works shall serve as ex officio members, and a member of the Council may also serve as an ex officio member of this Commission. (C-172, A.).

Charlestown are hereby ratified, confirmed, validated and enacted.” Id. The ratification act was signed by the Governor into law on March 25, 1981. Id. It is clear and unambiguous that the General Assembly’s passage of the ratification act and its signature by the Governor made this law a specific statute exempting Charlestown from the general scheme for the composition of a local planning board or commission. The General Assembly has not revised or amended the general scheme regarding the composition of a local planning board or commission since its enactment in 1972 as suggested by Whalerock. In addition, none of the decisional law cases referenced by Whalerock in its arguments advanced to support their contention are factually similar or of assistance to resolve the issue presented. Here, the ratification act is a specific act that must be given precedence to the general scheme. Warwick Housing Authority, 913 A.2d at 1036.

"When interpreting a statute, our ultimate goal is to give effect to the General Assembly's intent. \*\*\* The best evidence of such intent can be found in the plain language used in the statute. Thus, a clear and unambiguous statute will be literally construed." Kingston Hill Academy and the Compass School v. Chariho Regional School District, 2010-0362-M.P. (RI 2011). The intent of the General Assembly by passage of the ratification act was to give effect to all the terms and provisions of the Charlestown Town Charter-including the election of Planning Commission members. The ratification act was passed by the General Assembly and became law after the establishment of the general scheme in 1972 regarding the composition of a local planning board or commission. Accordingly, the only reasonable interpretation of the General Assembly’s intent and effect of the ratification act as it concerns the Charlestown Planning Commission’s electoral form of composition was to exempt them from the general

scheme established in 1972. Accordingly, the Charlestown Planning Commission is validly composed. The Court must deny and dismiss this claim asserted by Whalerock.

Even if the Court were to hold that the ratification act did not specifically exempt the Charlestown Planning Commission from the general scheme for the composition of a planning board or commission established in 1972, the ratification act had such an inferential result. The General Assembly did not ratify certain portions of the Charter presented for their review in 1981. The General Assembly ratified the entire Charter without exception or qualification. As such, only one reasonable interpretation of the intent of the General Assembly remains to effect the ratification act; that is, that the electoral form of composition for the Charlestown Planning Commission was exempted from the general scheme. Likewise, this interpretation leads to the result that the Charlestown Planning Commission is validly composed. Accordingly, the Court must deny and dismiss this claim asserted by Whalerock.