



**WALLER  
SMITH &  
PALMER<sup>PC</sup>**  
Attorneys at Law

EDWARD B. O'CONNELL  
TRACY M. COLLINS\*  
PHILIP M. JOHNSTONE+\*  
CHARLES C. ANDERSON  
KERIN M. WOODS+  
ELLEN C. BROWN\*  
MARK S. ZAMARKA  
CATHERINE A. MARRION  
TIMOTHY D. BLEASDALE

January 26, 2022

Shari Whitaker, President, Board of Governors  
Giants Neck Heights Association  
[shari.whittaker.84@gmail.com](mailto:shari.whittaker.84@gmail.com)

OF COUNSEL:  
ROBERT W. MARRION  
ROBERT P. ANDERSON, JR.  
FREDERICK B. GAHAGAN

+ ALSO ADMITTED IN RI  
\*ALSO ADMITTED IN MA

**Re: Questions regarding proposed bylaw amendments**

Dear Ms. Whitaker:

The Giants Neck Heights Association ("Association") Board of Governors ("Board") has requested our office to review and advise on several proposed amendments to the Association Bylaws. To that end you have provided a copy of the proposed amendments with comments. For purposes of this letter we have limited our response to a review of the proposed amendments and assume that the Association will follow the proper procedure to adopt them if it chooses to do so.

Before addressing these questions, it is useful to restate the Association's legal status. The Association is a special act community created in 1953 pursuant to a special act of the Connecticut General Assembly entitled "An Act Incorporating the Giants Neck Heights Association" ("Charter"). The Charter set out the territorial limits of the Association, who was eligible to vote at meetings, the Association's powers, and its ability to assess and collect property taxes, among other provisions.<sup>1</sup> In 1969 a constitutional amendment banned the legislature from enacting special acts regarding special act communities. The amendment did not repeal special act charters but generally blocked the legislature from amending them. Instead, a new process for amending special act charters was adopted.

As a Special Act community, the Association has only those powers granted to it by Connecticut General Statutes and the Association Charter. Here, section 7 of the Charter grants to the Association the power to "... [M]ake, amend or repeal by-laws, ordinances and regulations ... not in conflict with the general statutes or town ordinances." Section 10 provides that when Association by-laws or regulations conflict with East Lyme ordinances, those town ordinances shall control.

It is important to distinguish between the Association's Charter and its Bylaws. Municipal charters serve as the governing document for the municipality, and pertain to the core of its existence, similar to a constitution. Bylaws generally define things such as requirements for membership, officers' titles and responsibilities, how offices are to be assigned, how meetings should be conducted, and how often meetings will be held. The Association's current Bylaws were adopted in 2013.

<sup>1</sup> Sections 4 and 9 of the Charter were amended in 1963.



Here the Board is proposing several amendments to the 2013 Bylaws. Only those Bylaw amendments that are consistent with, or supplement the Charter, are allowed. Any amendments that speak directly to matters set out in the Charter, or conflict in some way with the Charter, cannot be done via the Bylaws. Rather, any such amendments would first require converting the Association to "Home Rule" governmental entity (which is itself an involved process) and then amending the Charter.

With the foregoing in mind, the following sets forth our analysis and recommendations as to each proposed amendment.

**Article I, Section 1 – Definition.** Section 3 of the Charter states that persons who are 21 years of age and own property within the Association limits shall be eligible to vote at meetings. The proposed Bylaw amendment would reduce the voting age to 18 or older.

Lowering the voting age to 18 is consistent with state and federal law. However, the amendment is inconsistent with the Charter, and would create confusion between the two. Moreover, who is allowed to vote is a core issue that is specifically defined in the Charter. It is our advice that lowering the voting age requires a Charter amendment via the Home Rule process briefly described above.

The comments to this amendment also ask if it is necessary or advisable to add language regarding the Association's legal status in this section. As noted above, the Charter fully establishes the Association's legal status, and bylaws and charters are separate documents with separate purposes. It is our recommendation that the language not be included in this section. Moreover, Article I addresses "Association Members" and the suggested language goes beyond that category.

**Article I, Section 2 – Voting.** The proposed amendment would allow for voting by Absentee Ballot. The current section provides for voting by those present at Association meetings. The proposed amendment would allow for a process for voting by absentee ballot.

As with the voting age, the manner of voting is a core issue that is addressed in the Charter. Section 3 states that eligible voters may vote at an Association meeting and hold office but does not allow absentee voting. Allowing absentee voting creates a right not provided for in the Charter and requires amending that document.

**Article II, Section 2 - Budget Meeting.** The proposed amendment states in essence that if a proposed budget is defeated, the Board may apply the current year's budget, unchanged, to the upcoming fiscal year, with no capital expenditures that were



not already authorized. Presumably the current tax rate would also apply, as that would have been authorized by the voters in the previous year.<sup>2</sup>

Section 9 of the Charter addresses taxes, assessments and the budget, and gives the Board the authority to prepare a budget subject to Association approval. It provides in relevant part that the Board prepares and submits a proposed budget (and tax rate) at the annual meeting, where it is voted on by the Association. The Charter does not address what happens if the budget is not approved. The proposed amendment does not create a new right or obligation and does not go beyond the authority already granted to the Board in the Charter. Rather, it merely supplements the Board's existing budgetary charge, and maintains the status quo if a proposed budget is rejected. Moreover, the existing, in-place budget would have been approved by the Association at the prior year's annual meeting.

**Article II, Section 6 – Quorum.** The proposed amendment states that a minimum of five members of the Board of Governors is required to transact business at an Association meeting. This is consistent with the Charter, which sets out a nine-person Board, of which five would represent a quorum.

**Article II, Section 8 – Emergency Expenditures.** The existing Bylaws grant to the Board the authority to expend Association funds, not to exceed \$7,500, in the event of emergency situations. The proposed amendment adds the definition of the term "emergency" consistent with that used by the Town of East Lyme.

The Charter gives the Board broad authority regarding matters of public safety, including but not limited to regulating travel over Association roads and to protect property from theft or injury. Defining "emergency" is consistent with the existing Bylaw and the power granted in the Charter.

**Article IV – Officers.** This is not a proposed amendment but a question regarding the status of the Board Secretary and Treasurer. According to the comments one Board member states that those positions are not officers, and other members disagree with that interpretation.

Section 4 of the Charter states in relevant part that "The board shall appoint a secretary and treasurer and define their duties. Neither of such appointee shall, necessarily, be a member of the board and both positions may be held by one person." (Emphasis added). The wording of this section clearly indicates that the Treasurer or Secretary may be members of the Board, but are not required to be.

---

<sup>2</sup> To avoid confusion it would be worthwhile to add a sentence or clause regarding the tax rate to the proposal.



**Article IV, Section 5 – Duties, Treasurer.** This section presently states that the Treasurer shall be a member of the Association, and appointed by the Board, although membership on the Board is not required to serve as Treasurer. The proposed amendment adds to the treasurer's existing duties the responsibility for completing the annual audit as required by state statute, as well as coordinating the independent external audit every three years.

Section 4 of the Charter specifically allows the Board to appoint a Treasurer and define the duties of that position. The proposed amendment is consistent with the Charter and supplements the existing definition.

**Article IV, Section 6 – Tax Collector.** The proposed amendment creates a new position of Tax Collector to collect taxes as set forth in the Connecticut General Statutes.

Section 9 of the Charter states that the Association is a separate taxing district with the power to assess and collect taxes on real property within the Association. That section also allows the Board to appoint a Tax Collector, stating in relevant part that "[T]he tax so laid shall be collected by the treasurer or by any collector specifically appointed by the governing board for that purpose ..." (Emphasis added). The proposed amendment is consistent with, and specifically provided for, in the Charter.

**Article VI, Section 3 – Audit Committee.** This amendment proposes to create a new "Audit Committee" comprised of three members, selected by an Audit Chair in connection with the statutorily required annual audit. The Treasurer and President of the Board are not members of this Committee but must "be present" for the audit.

While the Association Charter does not specifically authorize the creation of an Audit Committee, municipalities may establish advisory committees. However, here the proposed amendment is incomplete. It does not set forth the selection process, length of service or, more importantly, the committee's duties. Moreover, another proposed amendment (Article IV, Section 5) states that the Association Treasurer is responsible for the annual audit and for coordinating the external audit. This proposed amendment should be reviewed in light of the proposed amendment to Article IV, Section 5, to make sure they are consistent and do not conflict with each other. Also, the phrase "must be present for the audit" is not clear. Is it the intent that these officers be at the meeting when the results of the audit are presented by the auditors?

**Article VI, Section 5 – Nominating Committee.** This amendment creates a committee whose purpose is to "be active within the community and engage with members to bring new candidates to the annual election meetings."

As noted above, creating an advisory committee is a proper municipal function. This amendment clearly sets forth the duties, terms and composition of the Nominating Committee, and does not conflict with the Charter.

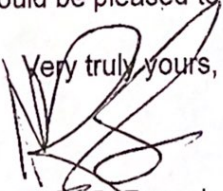
**Article VIII – Budget Requirements.** The existing Bylaw states that a planned expenditure in excess of three thousand dollars shall require three documented bids. The proposed amendment expands on this by requiring three estimates or quotes before an expenditure is presented to the Board for inclusion in the annual budget. This is consistent with the budget authority granted in the Charter.

**Article IX, Section 1 – Ordinances.** This new section states that ordinances are separate from bylaws and sets forth the process for amending ordinances. This is consistent with section 7 of the Charter which specifically grants to the Association the power to make, amend or repeal ordinances.

However, the sentence stating that "Absentee voting procedures shall apply" should be deleted.<sup>3</sup> As stated in the comments to Article I, Section 2, voting pertains to the core of the Association, and is specifically set forth in the Charter. The Charter does not provide for absentee voting, and this cannot be changed via the Bylaws. Instituting absentee voting requires amending the Association Charter, which first requires the Association converting to Home Rule.

If you have any further questions we would be pleased to respond.

Very truly yours,

  
Mark S. Zamarka, of  
Waller, Smith & Palmer, P.C.

---

<sup>3</sup> This sentence also appears in Article VII, Section 2 regarding procedures to amend the Bylaws, and should also be stricken for the reasons set forth above.