

MEMORANDUM

TO: Lisa Bourbonnais

FROM: Andrew M. Teitz, Esq.
Troy Lange, Legal Intern

DATE: June 10, 2019

SUBJECT: Inter-Municipal Zoning Enforcement

I. Question Presented

Is it possible for Coventry to enable East Greenwich to carry out its normal means of enforcing East Greenwich regulations for property that is located entirely within Coventry?

II. Brief Answer

Yes; the Rhode Island Interlocal Cooperation Act allows for municipalities to enter into agreements of the sort.

III. Analysis

This memorandum is in relation to the proposed “Crompton Meadows” development in Coventry, just to the north of Crompton Road in East Greenwich. Of particular concern is that once completed, this new development could cause additional water runoff into East Greenwich, which could be problematic both for property owners that could experience flooding as well as the Town itself which is responsible for ensuring protected wetlands are not subjected to civil runoff of this sort. Normally, if a new development were proposed within the Town, the Town and the

developers would work together to devise a plan which would carry with it obligations of the developer and subsequent caretakers of the property to maintain the property in ways that will not be detrimental to the surrounding area. As a part of such plans, the Town retains the right to rectify a situation if the property owners fail to do so. The owners are ultimately responsible for the cost of whatever work needs to be done, so the Town will also reserve the right to place a lien on the property for the cost of such maintenance if payment is not forthcoming.

While it is clear that the Town has the authority to take such action for property located within its own jurisdiction, it is not immediately evident that it could have the same authority with regards to property in a different jurisdiction. However, Rhode Island has enacted the “Interlocal Cooperation Act” at chapter 45-40.1 of the Rhode Island General Laws which provides the foundation for the sought-after authority here. The relevant provision provides that “[a]ny power or powers, privileges, or authority, exercised or capable of exercise by a public agency of this state, may be exercised and enjoyed jointly with any other public agency.” R.I.G.L. section 45-40.1-4(a). “Public agency” for purposes of the statute includes “any political subdivision of this state.” R.I.G.L. section 45-40.1-3(a). So long as a town is “capable of exercise[ing]” a specific power, then, it may grant another town the authority to exercise the same provided that an agreement is made pursuant to the State statute and the governing bodies take appropriate action by ordinance. R.I.G.L. section 45-40.1-4(b)(2).

The laws of both East Greenwich and Coventry also provide broad authority for the local governments to enter into agreements with other towns as well. Section C-4 of the Town of East Greenwich Charter provides that “[t]he Town may enter into contracts or cooperative agreements with . . . any political subdivision [of the state], for the performance of any service, the use of any facilities, the combination of services and/or functions, and the financing thereof.” Section 1.06 of

the Town of Coventry Charter states that “[t]he town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states, civil division, or agencies thereof.” Thus, so long as Coventry would be allowed to take some kind of corrective action if property within its own jurisdiction was affected by some violation, then Coventry could grant authority to East Greenwich to take up to that same corrective action under agreed-upon circumstances.

If the two towns are to make a formal agreement, it must indicate the agreement’s duration, purpose, the permissible methods for partially or totally terminating the agreement, along with any other “necessary and proper matter.” R.I.G.L. section 45-40.1-4(c). Once an agreement is formalized, then it must be submitted to the attorney general, who must approve of the agreement unless he finds it does not meet the requirements of the chapter. R.I.G.L. section 45-40.1-4(f). So, an agreement between the towns should be specific as to what actions East Greenwich may take against property owners in Coventry and in what circumstances it may take said actions. For example, if East Greenwich desires to be able to place and enforce liens against Coventry property owners if said property owners are causing issues in East Greenwich, then the agreement must state the conditions which give rise to a right to East Greenwich to order a property owner to fix the detrimental condition, and at which point East Greenwich has a right to take their own corrective action if the property owner fails to act. The agreement will also have to specify whether East Greenwich will directly file a lien with the Coventry land evidence records, or whether East Greenwich must request Coventry do so, etc. There should not be any vagueness in the agreement, as gray areas may result in the attorney general rejecting the agreement or East Greenwich lacking desired authority in certain circumstances.

IV. Conclusion

Towns in Rhode Island may form agreements with one another to grant a right of another town to take some action which, absent the agreement, only the former town could take. These agreements are handy especially in a situation like that of Crompton Meadows, where the development has a potential to adversely affect areas within East Greenwich even though the development will sit entirely in Coventry. Any agreement between towns can only grant authority to one town that another town already has within its jurisdiction. Agreements should also be specific and meet the other criteria as set out in the State law which enables such agreements to leave the attorney general with no grounds for rejecting the agreement.

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