DOCKET NO. LLI CV-13-6009045-S	:	**SUPERIOR COURT**
TOWN OF WOODBURY, and TOWN OF BETHLEHEM	:	**JUDICIAL DISTRICT OF LITCHFIELD**
v.	:	**AT LITCHFIELD**
BOARD OF EDUCATION, REGIONAL SCHOOL DISTRICT NO. 14	:	**OCTOBER 30, 2013**

DEFENDANT'S POST-TRIAL REPLY MEMORANDUM

After a trial on October 9, 2013, the parties[1] in this case filed post-trial briefs on October 25, 2013. The defendant herewith submits its reply brief.

There was a stipulation of facts in this case, and the facts are generally undisputed.[2] That being said, the defendants respectfully disagree with any attempt to minimize the publicity given to the referendum. In addition to the numerous articles concerning the referendum in the *Waterbury Republican-American* and *Voices* (including a front page story containing the date of

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[1] It appears that this Court has wisely denied the "Motion to Reargue" (Docket Entry #116.00) that was filed by parties from another case (hereinafter referred to the "Arras plaintiffs"). While the defendant strenuously disagrees with the position taken by the plaintiffs in the instant case with regard to the merits of the instant dispute, it does so with full respect for the opposition. Conversely, the defendant is truly troubled by the conduct of the Arras plaintiffs and their attorney, including their making a representation to this Court that they were unaware of the October 9, 2013 trial date when 1) they specifically were informed by e-mail of the court date (an e-mail that their attorney acknowledged receipt thereof), and 2) they have been repeatedly invited to intervene in this case but have refused to do so, while preferring to take potshots from the outside (including but not limited to their attempt to "transfer" the instant case to Waterbury, even though it has been tried, and their pending "motion to strike").

[2] We especially agree with the plaintiffs that there is no desire to "finger point" in this litigation. Hopefully, no comments in the defendant's briefs are viewed as being accusatory toward the plaintiffs or the Town Clerks, and if they were construed that way, then we regret it. For purposes of the litigation, all that is important for both sides' argument is the stipulation that the Town Clerks did not publish a "legal notice" or "warning."

the referendum), a) notice of the date, time, places to vote, and question to be voted on with regard to the referendum was posted on the defendant's website, b) the defendant sent to every resident in the Towns via the mail notice concerning the upcoming June 18, 2013 referendum, c) the defendant utilized its "Alert Now" robo-calling system to contact District parents/voters and notify them of the date, time, and places to vote with regard to the referendum, d) there were publicized tours of the high school building (with bussing provided for residents wishing to take the tour), e) there were discussions of and presentation on the project/referendum at town board meetings and senior centers, f) there was a public hearing on the project immediately preceding the special meeting that set the referendum date on May 16, 2013, and g) there was prominent signage, including hand-held signs and banners.

With regard to whether there was compliance with the commands of Connecticut General Statutes §9-226 (even to the extent that any such compliance is relevant), the actions of the Registrar of Voters should not be minimized. The Registrar of Voters is not some stranger but rather is a Town elections official. What the Registrar sent to the newspaper was entitled "***Notice***-News Release-For Immediate Release-Reminder-***Please Publish*** ASAP-Thank You" (emphasis added), and was not some mere "press release." The *Voices* article that followed was not a mere uninitiated "run of the mill" news article but rather contained all the information requested by the Registrar, and was published as a result of a request by the Registrar. Finally, the fact that it was sent "only" by the Registrar of Voters (and only by Woodbury) is irrelevant, as the key was the fact that such notice was provided. *See* Daly v. Town of Windsor, 2001 WL

56438 (Conn. Super. 2001) (failure of a majority of Board of Selectmen members to sign posted warning for the town meeting, contrary to Conn. Gen. Stat. §7-3, did not invalidate the meeting; the purpose of notice was accomplished as the warning was sufficient to inform the voters of the nature of the proposed action that was the business of the meeting and thus plaintiff's rights as a voter were not implicated).

The applicable statute requires that notice be published "of the time and the location of the polling place in the town and, in towns divided into voting districts, of the time and the location of the polling place in each district" along with the objects for which such election is to be held. Conn. Gen. Stat. §9-226. *Voices* published such information. ***Trial Exhibits C and D.*** The information required was published (in a prominent place in the newspaper), and notice was provided in at least a manner required by statute, if not **MORE**. ***Compare Exhibit D with Exhibit E.*** The purpose of the statute, if not the letter of the statute with regard to the type and degree of notice, was met. Every element of what was required by Conn. Gen. Stat. §9-226 was provided and the public was notified. The fact that it was the Registrar of Voters of one of the two member Towns (as opposed to both member Towns) does not detract from the fact that the public received via *Voices* notice consistent with what may be required under Connecticut General Statutes §9-226. Indeed, the public received more notice (and in a much more prominent portion of the newspaper) than if the parties strictly complied with the so-called "legal notice" requirement. Finally, whether the actions of the Registrar of Voters constituted compliance (substantial or otherwise) with the commands of Connecticut General Statutes §9-

226 (not to mention §10-47c) is irrelevant, for in order to overturn an election, a party must establish actual prejudice from any error that affected the outcome of the vote from any election, in light of Caruso v. City of Bridgeport, 285 Conn. 618 (2008).

It is understood that this Court required publishing for the instant case via an order of notice, and that the "legal notice" format is strictly required in the zoning arena, as noted by the plaintiffs vis-à-vis their reliance upon Gendron v. Borough of Naugatuck, 21 Conn. Supp. 78 (1958). It is admitted that the "legal notice" format/version of notice is tried and tested, and provides a default level of comfort to everyone. As noted by the Court of Common Pleas 55 years ago in the context of a zoning matter:

> The true purpose of publication is to give notification to those who may be affected by the monition. Publication in a newspaper of suitable circulation in the area, the residents of which it is desired to be apprised of a given event, is the most commonly authorized form of notice other than that of actual communication. Where the use of this method is sanctioned, it is considered to be effective notice *whether or not* it is observed by those for whom such information is intended.

Gendron v. Borough of Naugatuck, 21 Conn. Supp. at 85-86. (Emphasis added). In some ways, "legal notice" represents the bare minimum of notice that can be provided to the public (which was actually exceeded in the instant case). However, especially in the context of matters concerning elections, it is not the sole method to publicize, and its absence should not lead to the invalidation of an otherwise well-publicized election, in the context of Caruso v. City of Bridgeport, *supra*. This is especially true where ample publicity of the referendum is

established, and all the information required by the notice statute (and more) is adequately imparted to the public.[3]

Finally, with regard to the plaintiffs' reliance upon Pollard v. City of Norwalk, 108 Conn. 145 (1928), it is unclear as to the manner of the vote conducted (town meeting v. election). In the plaintiffs' post-trial brief, they appear to analyze Pollard as if it concerned the notice to be given for a referendum, while the defendant analyzed it as if it concerned the notice for a town meeting. A reading of the session law/special act at stake (and the Pollard decision itself) does reveal interchangeable but confusing references to "meeting" and "election;"[4] indeed, Pollard could have concerned a vote (or "election") taking place **at** a town meeting. However, the Court in Pollard analyzed the action at issue (and treated it) as if it were a "town meeting," as it waxed poetic about the "New England town meeting" institution. As noted by the Connecticut Supreme Court in a more recent decision, "town meetings" and referenda are different legal animals.

> For us to imply such an equivalence [between a town meeting and a referendum] would fly in the face of reality. In ordinary usage, the term "meeting" means an assembly or a gathering for political, social, religious or economic purposes. N. Webster, Third New International Dictionary. We have taken judicial notice of the fact that "[i]n a Connecticut town which has a town-hall, the words 'town meeting' connotes a meeting in the town-hall." *Portland Water Co. v. Portland,* 97 Conn. 628, 635, 118 A. 84 (1922). In *Pollard v. Norwalk,* 108 Conn. 145, 146, 142 A. 807 (1928), upon which the plaintiffs attempt to rely, this court cited *Brooklyn Trust Co. v. Hebron,* 51 Conn. 22, 29 (1883), for a description of a town

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[3] It appears that in Gendron, there were some newspaper articles making cursory reference to the public hearing on the zoning matter at issue. Id. at 80. In the instant case, there was robust reference to all the information required by the applicable notice statute (and more), and the notice was not caused solely by newspaper reporter, but rather the Registrar of Voters for the Town of Woodbury. ***See Exhibits C and D.***

[4] The defendant apologizes if its initial brief added to this confusion.

> meeting as an occasion on which "[t]he assembled voters" are, upon proper "warning," empowered to act. Thus a referendum in which individual voters cast individual ballots in individual voting booths does not constitute a town meeting.

Sadlowski v. Town of Manchester, 206 Conn. 579, 590 (1988). It is noteworthy that the Court in in Sadlowski actually cites Pollard as supporting its view that a town meeting and referendum are separate in the eyes of the law, with Pollard being cited as providing an example of a town meeting.

As one can see in the Pollard case, the Court considered the binding nature of notice for the meeting at issue in that case in the context of the then-existing body of law for town meetings. Pollard does not appear to have any relevance to any issue besides notice for a town meeting. To the extent Pollard could be strained or extended in an attempt to apply it to the instant referendum, it has been rendered obsolete by, *inter alia*, the Supreme Court's subsequent decisions in 1) Sadlowski, *supra*, in which the Court noted the difference between town meetings and referendum votes, and 2) Caruso v. City of Bridgeport, *supra*, in which the Court set forth the heavy burden placed upon a party seeking to invalidate an election, with this burden being equally applicable for referendum elections. Dvorsky v. Board of Education, Regional School District No. 14, 2011 WL 2150660 (Conn. Super. 2011).

In light of the standard used by courts to analyze elections, which is applicable to referenda, it is submitted that 1) to the extent required by Conn. Gen. Stat. §§9-226, 10-47c and 10-56, adequate notice of the referendum was provided, 2) the notice provided and/or the attendant publicity given to the June 18, 2013 referendum sufficed for permitting the electors to

participate in the referendum, that the results of the referendum are valid, and the results should not be vacated, and/or 3) regardless of whether these actions complied with the notice requirement of Conn. Gen. Stat. §9-226, the results of the referendum are valid (and reflected the intent of the voters/will of the people) and that the defendant (and the plaintiffs/Towns) may act in reliance upon the results and proceed with the building project at issue, in accordance with Conn. Gen. Stat. §10-56.

For the foregoing reasons, and the reasons provided in the defendant's October 25, 2013 initial trial brief, this Court should enter judgment for the defendant, as set forth in the defendant's prayer for relief for its counterclaims.

DEFENDANT-BOARD OF EDUCATION,
REGIONAL SCHOOL DISTRICT NO. 14

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CERTIFICATION

Pursuant to Practice Book Section 10-14, I hereby certify that a copy of the above was mailed or electronically delivered on October 30, 2013 to:

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