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CITY OF DANBURY
OFFICE OF THE CORPORATION COUNSEL
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

November 24, 2014

Hon. Mayor Mark D. Boughton
Hon. Members of the City Council
155 Deer Hill Avenue
Danbury, CT 06810

Re: Richter Park Cell Tower proposal

Dear Mayor and Council:

This office has been reviewing the prospective approval of a measure to allow the installation of a cell tower upon City property on the Richter Park Authority site. Revenue from the tower would be directed to the Park property and its recreational activities and further, it could be used to help defray costs and allow for other improvements as may be deemed recreationally necessary. This opinion, while setting forth our concerns and issues, intends to provide you with authority to fulfill the request and needs of the Stanley Lasker Richter Memorial Park Authority should you choose to vote to do so.

In the course of our review of the original deed of property to the City from Mrs. Richter in 1968, we initially encountered certain stumbling blocks to which we made reference in our earlier memo to you on or about September 6, 2011. These issues, and a few other related comments, * are as follows:

1. There appears to be a strong, evidenced intent on the part of Mrs. Richter that the property be **maintained in perpetuity for recreational uses** as further and specifically set forth on the deed. This is because Mrs. Richter set up what appears to be a restriction within a restriction; that is, she specified that the property is to be used "solely and exclusively" for recreational purposes, then followed up by listing specific enumerated purposes allowable so long as they were recreational in nature. There is little discernible language permitting other uses (such as a cell tower) that would be *ancillary or supportive* uses to the essential recreational purpose.(i.e. use of a cell tower for "revenue generation for recreational purpose").
2. The drafters of the deed also included limitations on or conditions of disposition of the property, including required notification of heirs of Mrs. Richter and an organization having interest in preservation (i.e. a *defeasible deed or condition subsequent with potential for reversion*). The two known (family) heirs have now formally waived any right to object to the use of the property for cell

tower purposes. These included, any other referenced or executory interests that may have existed are likely to be found to have been barred by time and condition. In any case, we expect that any concerns regarding a reversion of property in either part or its entirety or an actual event is unlikely.

The Richter property, transferred to Danbury in 1968 has, over the years evolved in its activities and has appeared to take on uses *generally* in conformance with Mrs. Richter's intent. Given the issues mentioned above, should the Council vote to authorize the Richter Authority to engage in discussions toward and placement of a tower on the back property of the Richter site we trust that Richter will endeavor and be able to organize such ancillary uses (including but not limited to revenue generation) that could reasonably be viewed as supporting the recreational purposes that Mrs. Richter would agree are in general conformity with her intentions in 1968. Further, it is anticipated that the tower will be utilized for public safety placements that should assist to protect not only City residents, but Richter Park patrons, staff and guests.

It is the opinion of this office that, understanding the limited risk and condition(s) referenced above, the Council can authorize the Richter Park Authority to engage with a cell tower placement firm in conjunction with appropriate City involvement and approvals, to locate such tower on a designated site least intrusive upon the recreational purpose and use of the property.

To ensure that full authorization is proper, and that any approval in the most conservative fashion, it is our further opinion that the Council should take two votes: **Initially**, and pursuant to City Charter Section 3-17 pertaining to a transfer of interest in real estate (this matter involves an alteration to deeded intent) a two-thirds vote of the full Council is urged (14 affirmative votes) in order to accept a limited waiver of the deed restrictions from heirs and, **then**, later, once you are satisfied as to the location, zoning approvals, the agreement engaging the tower provider and any preliminary CT Siting Council action, a second two thirds vote of the full Council should occur (14 affirmative votes) authorizing by lease the (non) recreational use of the property and situating the tower upon the property in conformance with the ancillary and supportive use of the property and any alteration to a Master Plan that may be implicated.

A public hearing prior to the second vote is required.

The motion appended may assist in the furtherance of your actions in this regard.

**We need to reflect three related issues: First, we would prefer to have seen in the 1968 deed a clause that included a "right to waive" provision that would authorize an heir or someone else to alter the designated use as specified by specific language. This leaves us in a position where we have to interpret language of people no longer alive; Second, Mrs. Richter may have chosen the language she did fully expecting that either the City would fund the Authority appropriately for the purposes of the Park operations intended (no outside non recreational activity required), or to secure such revenue stream that it had and confined its activities accordingly. Unfortunately, we do not have the benefit of these clauses. Third, finally and positively, there is some available case law that appears to lessen the risk by finding that restrictive covenants of the type in this deed are upheld only under certain circumstances (not existing here), therefore easing the way for your action to allow the tower.*

Please contact us with any questions regarding this matter. Again, a proposed motion is appended that you can use, modify or choose not to.

Very truly yours,



Laszlo L. Pinter
Deputy Corporation Counsel

“Richtertoweropinion2”

MOTION – Richter Park Cell Tower Request

Receive the Partial Waiver(s) of Deed Restriction, and **approve**, based on authority of the City Council to grant or otherwise transfer rights in real estate pursuant to Charter Section 3-17 by two-thirds vote of the full Council, a *limited* waiver to the 1968 Richter property deed restriction to the City of Danbury permitting the placement of a cell tower upon Richter Park Authority-managed property in a location and subject to such terms and conditions pursuant to a lease or contract as may be negotiated and proposed by the Richter Park Authority and as approved by this Council after a public hearing, by a subsequent vote of a two-thirds vote of the full Council, said cell tower to be used solely for essential public safety and for revenue generation to promote the recreational uses of Richter Park property and as may conform to its approved master plan.

“RichterTower”



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August 28, 2014

Honorable Joseph M. Cavo
City Council
155 Deer Hill Avenue
Danbury, CT 06810

Dear Councilman Cavo,

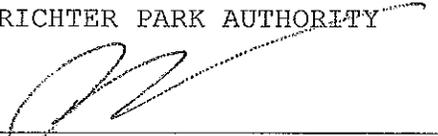
Please be advised that at a regularly scheduled monthly meeting held on August 19, 2014, the Stanley Lasker Richter Memorial Park Authority (the "Authority") requested and authorized the undersigned to write the Council to request that the Council approve the construction and erection of a cell phone tower and its appurtenances on the Park property for the following reasons:

1. To fund the "Master Plan".
2. To enhance the public safety in the Richter Park area.

Sincerely,

RICHTER PARK AUTHORITY

BY:



ROBERT V. EBERHARD,
Its Chairman

RVE:dt

cc: Honorable Mark Boughton, Mayor