

**TO:** Representative Town Meeting (“RTM”)  
**FROM:** RTM Finance and Public Works Committees  
**SUBJECT:** Review of Appropriation Requests for  
(1) \$220,000 to purchase a Front-End Loader with Four-Wheel Drive, and  
(2) \$154,000 to purchase and install street furniture in Downtown Westport

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On April 22, 2021, the RTM Finance Committee<sup>1</sup> and RTM Public Works Committee<sup>2</sup> reviewed appropriation requests for funds to purchase a front-end loader and street furniture, as described in further detail below. The **RTM Public Protection Committee unanimously approved both appropriation requests**. The RTM Finance Committee did not have a quorum, but the members present expressed their support for the appropriation requests.

### **Front-End Loader with Four-Wheel Drive**

Peter Ratkiewich, the Director of Public Works, presented his department’s request for \$220,000 to purchase a Four-Wheel Drive Front-End Loader along with the corresponding bond and note authorization. He explained that the town’s Solid Waste Division would use the loader for managing brush and yard waste and maintaining town properties. The Department of Public Works would also use the loader to prepare for major weather events and clean up thereafter.

Mr. Ratkiewich explained that the loader used for these tasks now is 15-years-old and needs its safety systems repaired, which would cost \$40,000 to \$50,000. This repair may not even be possible because the necessary parts are in short supply. The town may purchase a new loader for the discounted, state-contracted price of \$220,000, which is \$60,000 less than the estimate in year 2022 of the town’s Capital Forecast. In addition, the town should be able to recoup \$20,000 to \$40,000 at auction for the current loader.

### **Street Furniture for Downtown Westport**

Randy Herbertson joined Mr. Ratkiewich to provide detail on the \$154,000 appropriation request for the purchase and installation of benches, trash/recycling receptacles, and bike racks. Mr. Herbertson is the Chair of the Downtown Plan Implementation Committee. He explained that the current downtown street furniture is 30-years-old, doesn’t match, and is in disrepair. The new furniture that his committee selected would do the following:

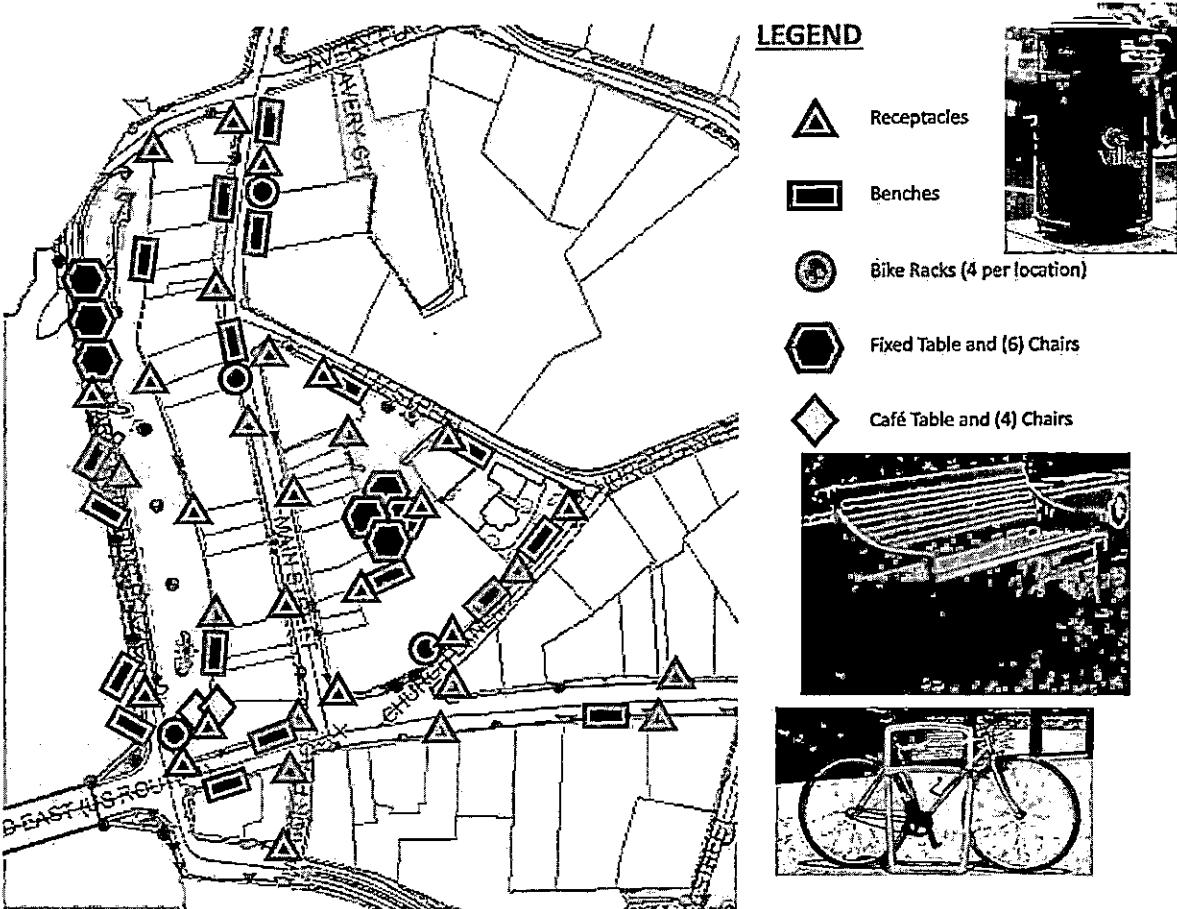
- Improve aesthetics downtown,
- Add recycling as a waste disposal option, and
- Provide bike parking, which makes cycling to/from downtown more feasible.

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<sup>1</sup> **Members Present:** Jeff Wieser, Jessica Bram, Rick Jaffe, Christine Meiers Schatz

<sup>2</sup> **Members Present:** Jay Keenan, Andrew Colabella, Peter Gold, Karen Kramer, Sal Liccione, Dick Lowenstein, Lou Mall, Matthew Mandell, and Chris Tait

Mr. Herbertson reviewed the proposed locations for the street furniture, and explained that the tables/chairs included in the map below are not part of this phase of the project. When asked why there wasn't more furniture west of Post Road, Mr. Herbertson said that more could be added there at a future date. He was also open to the idea of adding bike repair stations.



The quote lists the pertinent quantities and prices as follows:

- 19 **benches** in smoke gray or black at **\$2,510** each for a total of \$47,690.
- 32 **litter/recycling receptacles** at **\$2,064** each, for a total of \$66,048, and
- 16 **bike racks** at \$575 each, for a total of \$9,200.

Mr. Herbertson acknowledged that the outdoor furniture was expensive, but explained that the options from other vendors had the same pricing with the same warranty but didn't look as nice. In addition, New Haven and Norwalk recently purchased similar furniture from the same vendor and raved about the quality.

If the town purchases the furniture, the Public Works Department would maintain it and the Parks and Recreation Department would clear the trash.

Since the more than one hundred petitioners brought this petition to the RTM more than two years ago, there have been a total of nine public meetings-- **five** Ordinance committee meetings on this proposed ordinance, and **four** Public Protection committee meetings -- plus another dozen meetings between representatives of the Petitioners and members of the committees and other RTM members. At each meeting, the Chief of police and other police department members, as well as the Asst Attorney, Eileen Flug, police union counsel, and numerous others, have attended and joined dozens of others to work on the best ordinance for a civilian review board.

With all these members of the community working together, we believe that the result is far superior to the 'panel' proposed, after the fact, by the First Selectman. The First Selectman's proposed panel, in contrast, is devoid of any input from the town legislature (which is the RTM), and is devoid of any input from any of the one hundred petitioners.

The revisions over the course of two years involve a very COLLABORATIVE process. This collaborative process has resulted in substantial revisions, but it remains consistent with best practices suggested by the DOJ, the CT Bar Association, the ACLU, and the CT AG and State legislature.

1. Now, after this lengthy and collaborative process involving input from dozens of people, the determination of best practices was that the *RTM should appoint and vote on five members of the CRB instead of the First Selectman*. The selectman promised to increase the panel to five, but has failed to do so. He promised to allow at least two of the members to be appointed by the RTM, but failed to fulfill that process. Studies from multiple organizations advise against having the first Selectman make the appointments, so there appears to be broad support that this proposed ordinance provision is far superior to the Marpe panel approach.
2. Now, TEAM Westport gets to appoint one CRB member.
3. Originally, the petitioners proposed that the CRB do the entire investigation, from start to finish. Now, the process works exactly as it does with respect to criminal investigations and prosecutions – which is a tried and true process, tested for hundreds of years throughout the US and in all communities. Specifically, the police handle will handle the investigations, promptly take statements, promptly do interviews, and secure evidence as they deem required. Thus, there will be absolutely no delay in the police taking and securing evidence or statements. However, at the time the Board meets in response to a civilian complaint, the Board will review the evidence compiled by the police, and hear the evidence, take sworn statements from the witnesses as needed, and determine whether more evidence is needed. The Board will interview the witnesses as well, make credibility assessments and then will assess the evidence and make a recommendation to the chief of Police, who will determine whether to accept or reject the Board's recommendation.

***This proposed oversight is the minimal level of oversight recommended by the CT Bar Association.*** We are the only town in Fairfield Cty without either a police commission or civilian review board, other than Greenwich. But even Greenwich has more accountability and oversight, because in Greenwich, it is entirely the civilian gov't-- the Board of Selectman-- that determines police procedures and determines discipline. Here in Westport, in contrast, the Chief of Police determines the discipline and procedures—which is an exception to standard practice in Fairfield Cty.

**Under the proposed ordinance, the investigative stage would be collaborative between the Board and the police investigators and credibility findings would be more objective, because they would be determined by the Board.**

There is no measure presently in place in Westport that addresses these same issues in the same way that the proposed ordinance addresses them. The below written points explain why this proposed Board is very different from the Panel format that Marpe has temporarily instituted – a panel and procedures which may disappear entirely upon the November election of a new Selectman.

There are **eleven significant differences** between the ineffective present Panel approach, and the Petitioners' CRB approach: 1- transparency of complaints; 2—transparency of investigations that are unbiased; 3—subpoena power; 4-- predictability, consistency and permanence; 5—staggered terms for continuity of experience; 6— independence of members; 7—delay; 8—duplication of effort and waste; 9—potential legal problems; 10—disparate contradictory findings; and 11—the ineffectiveness of the appellate cure.

Given the limits of time permitted for First Readings, this statement is being sent to the entire RTM to be made part of the record, but the below remaining points will be not read, but shall be made part of the record.

**The Petitioners urge the RTM to follow the CT Bar Association recommendation that every town have either a police commission, or a CRB. Westport is lagging behind all of Fairfield County on police accountability and oversight. This proposal is a thoughtful, thorough, collaborative procedure to implement the necessary oversight and accountability. We look forward to discuss this issue further at the final vote at the Oct. 4<sup>th</sup> RTM meeting.**



- 1. Transparency of complaints:** The Board receives complaints simultaneously; the Panel does not. This is a critical difference. Part of the problem is that people's complaints are being miscategorized, discouraged, discounted, lost, etc. **The Panel proposal does nothing to solve for the "disappearing complaint" problem;** whereas the CRB ordinance would ensure that complaints must also be filed with the CRB so that they are not 'lost', 'mischaracterized,' or discouraged from being filed. **The transparency of the**

complaint process is an issue that the CRB solves for, but the Panel does absolutely nothing to resolve.

2. **Transparency of investigations that are unbiased:** the Board has the power to interview witnesses *de novo*. The panel, in contrast, is set up to be appellate in nature and to leave the investigation and credibility determinations entirely to the police. The panel solution is inferior on this point for several reasons. **The CT ACLU has found that the CRB MUST have some investigative power in order to be successful.** <https://www.acluct.org/en/news/civilian-review-boards-work-they-must-avoid-past-mistakes> (“The *first major thing* that CRBs **must be structured to include is investigative powers, including subpoena power.** Subpoena power allows a CRB to compel witnesses to testify and produce documents in the course of investigations – an important tool to combat police obstruction of CRB investigations into public complaints, police misconduct, or other policing issues.”) **Thus, the proposed CRB proposes transparent, unbiased investigations. The Panel does zero to promote an initial transparent, unbiased investigation.**
3. **Subpoena power:** The panel has no **subpoena power**, and cannot have it. Commissions are set up under a different statute (enabling legislation, which does not allow subpoena power.) Only a CRB established by ordinance can have subpoena power. Subpoena power is a critical discovery tool to get to the truth. We have revised the subpoena power so that subpoenas cannot be issued without the agreement and approval from the police investigating officer, in conjunction with a majority vote from the Board. So both the police and Board would have to agree.
4. **Predictability, consistency and permanence:** The panel is temporary, and can be dissolved at any time. This makes **predictability, planning, and consistency** difficult. The next Selectman can change the rules and the jurisdiction at any time; so can the present First Selectman. The CRB, in contrast, would be enacted as an ordinance, and therefore would have the benefits of **predictability, consistency and permanence**, and would not be varying from administration to administration or disappearing entirely at a whim.
5. **Staggered terms for continuity of experience:** Staggering service to ensure continuity is not possible with a panel. The panel is like a presidential Cabinet. The panel appointments have no relevance the moment the first Selectman’s administration ends, as the panel does not even exist under the Charter or by ordinance. The panel has zero power once the administration is over and leaves office. For that reason, all panel appointees are gone all at once. This makes impossible the desirable staggering that this committee suggested and included in the ordinance. **In contrast, the CRB has staggered terms.** The staggering of CRB Board member terms was to ensure there are always more experienced members on the panel, so that only half the board would be new every two years. Such continuity of experienced Board members for four years and from

administration to administration, even when a Selectman's administration ends, is possible with the CRB, but not the panel.

6. **Independence and objectivity of members:** **Independence and objectivity** is another critical difference—the proposed CRB has such independence, whereas the Panel is selected in precisely the way the ACLU advises against—by the Selectman. The ACLU states that CRB members should be elected by the electorate, or appointed by the legislature. However, it has found that the Town executive (Mayor or Selectman) should not be involved in appointing the CRB members, because the executive also appoints the Chief of Police, who is a direct report to the executive, and therefore has a vested interest in exonerating the Chief and the police. The CT ACLU has advised *“Decisions about who serves on a civilian review board should be made by the community and its legislative body, not those with conflicts of interest like the police chief or executive branch members who select police chiefs.”* <https://www.acluct.org/en/news/civilian-review-boards-work-they-must-avoid-past-mistakes>
7. **Delay:** **Delay is a problem with the Panel/Appellate approach;** there is no such delay in the CRB approach. According to the Panel/appellate approach, the complainant does not get an objective unbiased review until after exhausting his complaint at the WPD. When time is of essence, such delay can hurt the delivery of justice, and memories can fade, stories can be arranged to line up with a particular narrative. Justice delayed is justice denied. Here, the police promptly undertake investigations and take statements, and the Board promptly handles the hearing at which they hear from the witnesses under oath directly and promptly.
8. **Duplication of effort and waste:** **Duplication of effort and waste is a problem with the Panel/Appellate approach;** there is no such duplication of effort in the CRB approach. The investigation is done collaboratively with the police in the CRB approach. If a complainant is concerned that an avenue is not being investigated or his or her words are being twisted, the complainant can raise those concerns to the CRB which can evaluate them, discuss them with a police officer assigned to assist the investigation, and decide whether to immediately remedy those concerns by addressing the deficits in the first investigation, instead of (1) waiting until it is over, and (2) then attempting to reinvent the wheel and (3) redo the investigation in a second investigation. Having two investigations occur consecutively as the panel/appellate approach would suggest is wasteful. Having one investigation done correctly and collaboratively with both the CRB and police involved with appropriate guidance from the CRB is more efficient.
9. **Potential legal problems:** The Panel/appellate approach presents **potential legal problems** that are not posed by the CRB. The Panel/appellate approach allows the panel to veto and over-ride the Chief's decision. The CRB, instead, has recommendation authority, which the Chief reviews and then articulates why he will accept or reject. The due process concerns raised by the union lawyer only come into play when a panel or board makes the definitive decision for the police. There is no such problem when the

Board only has recommendation authority. Thus, the panel/appellate approach creates legal problems that the CRB does not present.

10. **Disparate/contradictory findings:** The Panel/appellate approach presents the problem labor attorney Floyd Dugas said was best to avoid—two sets of potential contradictory findings of fact, and two different disciplinary sentences, which could make it difficult for him to defend before a mediator arbitrator. In contrast, the CRB approach involves a single sets of findings of fact, and only one final decision regarding discipline.
11. **Ineffectiveness of the appellate/panel cure:** Attorney Floyd Dugs has explained another aspect of realpolitik at the mediation/arbitration level that will make a panel/appellate approach a completely ineffective cure. He explained that in his experience, if he is defending two conflicting sets of findings and disciplinary sentences, the mediator/arbitrator will inexorably default to the discipline that is weaker and more lenient. The panel/appellate approach comes into play when the complainant is unhappy with the discipline and the investigation, and appeals it. If the CRB makes different findings and reverses and imposes the sought after more severe discipline, the more severe discipline will go to mediation/arbitration, where Mr. Dugas claims the **mediator/arbitrator will typically default to the softer discipline**. What this means is that, inevitably, the panel/appellate approach will be futile, because the revised more serious discipline will be rejected. Thus, the appellate effort will be futile. The appellate decision will be rejected in favor of the lighter discipline. Thus, the only thing the panel/appellate approach will achieve is duplication of effort, delay and a false promise.

As set forth in #11 above, **the panel/appellate approach will cause delay, duplication of effort, legal issues, and ultimately will be completely ineffective**. The Petitioners have no interest in being part of a completely ineffective law that this Town passes as a feint to pretend to be doing something about a serious problem.

Such a panel/appellate approach will simply be misleading Westporters into believing that it is a measure with real teeth, but we know for all the above reasons that it will provide no progress. Therefore, the Petitioners have worked for two years on the present approach, which is a collaboratively approach. The petitioners have no interest in being part of a panel/appellate approach which is ineffective and misleads Westporters into believing that its elected officials are doing something about justice equity, checks and balances, accountability and transparency, when instead such officials are simply kicking sand in the face of those serious concerns.

In any event, this after nine committee meetings, two unanimous Ordinance Committee votes and a split Public Protection Committee vote, the ordinance is now ripe for an up or down vote on October 4, or a motion to amend and final approval.

Thank you.

Jason Stiber and more than 100 Westport Petitioners