

# Local Government of the Future Subcommittee Advisory Commission on Intergovernmental Relations

Tuesday, October 26, 2021

*Note: This document is ACIR staff notes written during this subcommittee meeting. It is a public document and has been provided to meeting participants for their review and revised in accordance with any comments received but is not approved minutes of the meeting.*

The agenda is available at:

<https://egov.ct.gov/PMC/Agenda/Download/10385>

The audio recording is available at:

[https://portal.ct.gov/-/media/ACIR/Meetings/2021/2021-10-26\\_ACIR\\_LGF\\_Audio.mp3](https://portal.ct.gov/-/media/ACIR/Meetings/2021/2021-10-26_ACIR_LGF_Audio.mp3)

**ACIR Members present:** Maureen Brummett, John Filchak, Marcia Leclerc, James O'Leary, Francis Pickering, Brendan Sharkey (Chair), Lyle Wray (Vice-Chair)

**Other participants:** Dory Famiglietti, Leah Grenier, Tim Hollister, Rep. Cristin McCarthy Vahey, Dan Medress, Brian O'Connor, Meghan Portfolio, Rick Porth, Rich Roberts, Margaret Wirtenberg

**ACIR staff:** Bruce Wittchen

## 1. Call to order

Commission chair Sharkey called the meeting to order at 10:36 and provided an overview of the ACIR's Local Government of the Future initiative and the current work on a home rule report.

## 2. Review of [9/28/2021 meeting notes](#)

There were no comments.

## 3. Discussion of Local Government of the Future initiative

- a. Update on home rule report (see Sec. 5 of the ACIR's draft [10/1/2021 minutes](#) and [10/13/2021 Planning & Development Committee forum](#))

Commission chair outlined the goals of the ACIR's Local Government of the Future (LGF) initiative and explained the intention behind the current work on home rule and described what has been done to date. He said the ACIR decided at its last meeting that this meeting should conclude the review of specific applications of home rule and the group will then proceed with a report.

Commission chair Sharkey described ACIR members' recent meeting the Planning & Development Committee to update them on this work, the committee's first in-person meeting since before the pandemic, and said it was very successful. He said there was some pushback but the ACIR's effort is appreciated by the committee chairs. Commission chair Sharkey also pointed out that the last remaining topic, being discussed today, is the elephant in the room and he mentioned some of the associated controversies.

- b. Applications of [home rule](#) in local land use control

Commission chair Sharkey introduced attorney Tim Hollister and Atty Hollister described his experience in this area. He noted that home rule is enshrined in the state constitution and described various models of home rule, including Dillon's Rule, which applies in CT. He described

how the state provides powers to municipalities, noting exceptions for matters of strictly local concern, such as how to spend unexpended funds in the budget and how to fill local positions. He also mentioned state preemption.

Atty Hollister also contrasted the authority of municipal charters and state statutes, providing the example of a Middletown commission decision for which the charter requires more than a simple majority to reach a decision, which differs from the governing state statute. That has been taken to court and he expects the court to rule consistent with state statute. He also noted that many of these issues are addressed in [PA 21-29](#), *An act concerning the zoning enabling act, accessory apartments, training for certain land use officials, municipal affordable housing plans and a commission on Connecticut's development and future*. Atty Hollister invited questions.

Commission chair Sharkey said misperceptions about what towns can and cannot do are widespread, noting the example in Middletown and asked for other examples. Atty Hollister noted the range of statements made about local control and local choice. He also described the origins of [CGS 8-30g](#), the affordable housing land use appeals section of statutes, going back to the Tondro Commission ([Governor's Blue Ribbon Commission on Housing](#)). He added that conflicting viewpoints regarding seemed to influence what was removed from PA 21-29 prior to passage.

Commission chair Sharkey noted the conflict between law and tradition and Atty Hollister said tradition is a small-t word, without legal meaning. He said courts were deferential to towns prior to 8-30g but the legislature has always had the ability to pare that back. Commission vice chair Wray agreed that a history of deference is not the same as law and said it goes back to English law. He added that the tradition of deference is over-ridden for group homes and other local land uses serving a broader public purpose. Commission vice chair Wray also said deference is not an intrinsic legal power and that, although the state does not want to deal with every local matter, it can. Commission chair Sharkey said wise politicians only assert power when essential.

Commission member Filchak said he sees members of local land use commissions make invalid decisions and sometimes the easiest path for a developer is to accept them. He pointed out that Easton does not have zoning regulations but has 200-page subdivision regulations that look like zoning. There was a discussion of PA 21-29's training requirements for local commissions to clarify what was included.

Commission member Filchak asked how the ACIR's home rule report should approach this and Atty Hollister recommended emphasizing that tradition should not be confused with legal structure. Commission chair Sharkey added that home rule does not equal local control; it is granted by the state and can be taken away.

Atty Richard Roberts asked at what point do local land use decisions become a statewide concern. He mentioned the state taking away limits regarding downtown dining and asked if this is a statewide interest. He highlighted the magnitude of difference between the state's largest cities and smallest towns and influence on local control. Commission chair Sharkey said the state should consider that one size does not fit all.

Richard Porth said elected representatives need to use discretion, but added that there is a growing recognition of the impacts of separating people by race and income. If such separation limits economic opportunities is it of statewide interest? Atty Hollister said the direct and indirect impacts of local land use decisions can be addressed statewide. He mentioned that he will be part of the Commission on CT's Development and Future created by PA 21-29 and also noted that housing markets are not local. They are at least regional.

Commission member Filchak commented about zoning boards talking about keeping down the number of kids who will attend school in the future. He also noted that topography and other site constraints can result in 2-acre zoning being more like 5-acre zoning. Mr. Porth said the passage of

PA 21-29 was courageous, but added that zoning boards might not see the impact of their decisions on the state as a whole. Commission chair Sharkey asked what the tipping point is and Atty Hollister said towns have gone from opposing 8-30g to seeing economic benefits. He added that such development is in their economic and social self-interest and 5-acre zoning will be to the detriment of the town.

c. Next steps

Commission member Sharkey thanked Atty Hollister, Atty Roberts, Rep. McCarthy Vahey, and everyone else who attended this meeting. He said the ACIR will discuss next steps when it meets on 11/5.

**4. Adjourn**

The meeting was adjourned at 11:26.

*Notes prepared by Bruce Wittchen, OPM*