

Planning, Zoning and Housing Committee  
of the Darien, Connecticut RTM

Draft Meeting Minutes

Date: January 20, 2010  
Place: Darien Town Hall, Auditorium  
Present: Adelman, Bacon, Bayne, Bishko, Cleary, Conologue, Guimond, Hennessy,  
Marston, Miller, Olvany, Sini, van der Kieft, Young  
Absent: Fead, Magida, Ness

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This was a meeting of the Planning, Zoning and Housing Committee and members of the TSG&A and Finance and Budget Committees with Town Counsel for an informal discussion of the proposed Tax Abatement Ordinance for Low and Moderate Income Housing.

The meeting was called to order at approximately 8:10 PM. The meeting's agenda and protocol were reviewed by John van der Kieft, PZ&H Committee Chairman.

van der Kieft indicated that he attended the recent Board of Finance meeting and called on Mr. Stegelman to share the topics of discussion raised at that meeting. Mr. Stegelman indicated that in general, the BOF is supportive of a tool which will assist in the development of affordable housing in Darien. The BOF is concerned that tax abatements could significantly impact Darien's tax base and believes it is important that the final draft of the ordinance include a review or recommendation from the BOF, before an RTM vote on the proposed ordinance.

An informal discussion about the proposed ordinance with Town Counsel ensued. Town Counsel addressed questions that were submitted before the meeting by PZ&H members. Questions were also fielded from the floor from members of the RTM and other Town Officials.

Topics of the informal discussion included:

1. Description of the draft ordinance as proposed
2. Definition of enabling legislation
3. History of the state statute which allows tax abatement ordinances in municipalities
4. Goals of the state statute
5. Ability to amend the draft ordinance
6. Proposed Special Permit requirements from the Planning and Zoning Commission
7. Approval requirements from the Board of Selectmen and RTM as written in the proposed ordinance
8. Legal rights of the Town and the lack of contractual rights of a potential applicant
9. The lack of successful tax abatement challenges in Connecticut
10. No requirements to act on the ordinance if passed
11. Potential impact on future tax revenue within Darien
12. Approval requirements for tax abatement applications
13. How tax abatement relates to the states PILOT program
14. Effective date that the ordinance would become effective

15. Duration of tax abatement contracts
16. The potential benefits and flexibility that a tax abatement ordinance could bring to the town
17. Tax abatement legislation enacted in other towns and cities in Connecticut
18. Other tax assessment techniques used for affordable housing in other small towns throughout the State.
19. Examples of using tax assessments as a tool to help support affordable housing developments in their early years of development and occupancy
20. The Tax Assessor's inability to significantly modify property taxes under the current Town Ordinance
21. Deed restrictions for affordable housing
22. The proposed threshold of affordable housing included in the draft ordinance
23. Proportionate allocation of common space in a hybrid affordable housing and market rate development.
24. Ability to attach compliance provisions to a contract
25. Applicability to Allen O'Neil's redevelopment
26. Record keeping associated with tax abatement applications
27. Other methods to support affordable housing in town (e.g., by supplying town services)
28. Potential incremental costs generated with an increase in affordable housing stock in Darien

Bacon departed the meeting.

The members of the PZ&H Committee had a further discussion on how the Committee should proceed in addressing the proposed tax abatement ordinance that is included on the January 25<sup>th</sup> RTM agenda. Some members voiced their support of the proposed ordinance. Others voiced their concern that a BOF review should be included in the proposed legislation and a final draft should be distributed for further review and consideration before the Committee made a recommendation to the RTM.

A motion was made by Conologue for the PZ&H Committee to advise the RTM to delay its vote on the proposed tax abatement ordinance until the Committee can receive additional input from the Board of Finance, review a final draft, and allow for additional time for consideration. The motion was seconded. The vote resulted in nine in favor of postponement (Bishko, Conologue, Guimond, Hennessy, Marston, Miller, Sini, van der Kieft, Young) with four opposed (Adelman, Bayne, Cleary, Olvany). There were no abstentions.

Chairman van der Kieft will report the results of the Committee's vote at the January 25<sup>th</sup> RTM meeting and recommend that the RTM's vote on the proposed ordinance be postponed.

Having no further business, the RTM's PZ&H Committee adjourned at approximately 10:15 pm.

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Submitted by John Sini, Jr., Acting Clerk

*Attachment*

**Proposed Tax Abatement Ordinance for Low and Moderate Income Housing  
Questions for Town Counsel from the PZ&H Committee's Members**

1. It appears that if the applicant satisfies the requirements for a Special Permit and the required proportion of low/moderate income housing the only basis for denial, by either the RTM or the Board of Selectmen, is whether the Town could afford it. Is this correct?
  
2. Assume Ordinance has been approved by Town bodies ---
  - (a) If an applicant (presumably the first) who has satisfied the requirement for a Special Permit and the required proportion (percentage) of low and/or moderate income housing is denied can he rightfully sue?
  
  - (b) This may be redundant, but if the Tax Abatement Ordinance is approved must it be acted upon?
    1. (b) If an applicant is approved for tax abatement and a subsequent applicant who has satisfied the requirements for a Special Permit and the proportion of low/moderate income housing is denied would the applicant be able to rightfully sue?
  
3. Some Committee members have questioned the year "effective" plus 39 year term, which seems arbitrary and confining. Wouldn't it be more practicable to state something like "shall become effective on the date specified and terminate on the date specified"?
  
4. What would qualify under item "(4) to provide necessary related facilities or services in such housing"?
  
5. Could the proposed tax abatement be applied to purchase of land?
  
6. Could the owner request tax abatement if he were to encounter financial difficulty?
  
7. Should approval by the Board of Finance be a condition for approval.
  
8. Does the statement "The First Selectman may enter into contract" imply approval of the Board of Selectmen? Shouldn't the Board of Selectmen be specified in the ordinance?
  
9. The statement that "continuation of the abatement **may** be conditioned upon the continuation of state reimbursement to the town for such abatement" suggests that if the state discontinues reimbursement the town could discontinue the tax abatement.

Is this fair, appropriate, to the owner --- to abort the agreement?

(I may be missing something but I don't recall where Darien's proposed tax abatements are to be predicated upon state reimbursement.)

10. Maintaining eligibility once granted. The Westport Ordinance provides for oversight to ensure that the owner continues to fulfill his obligations. "The Tax Abatement Committee shall be responsible for an annual review to determine if the premises to which a tax abatement has been granted remains eligible ...".

Shouldn't the ordinance have a similar compliance provision?

(It may be hearsay but I have heard compliance has been a problem in the past with rent payments/eligibility at Allen O'Neill Homes.)

11. While the application sequence is different, the Westport Ordinance provides for the Approval, Reduction or Rejection by the RTM. Should the possibility of reduction by the RTM be stipulated in the Ordinance or is that to be an understood?
12. Can abatement be limited to projects that are linked to government entities (such as housing authorities) or that would revert to government entities after the initial financing period (typically 20+ years)?
13. Can the Town decide to issue partial abatement or varying abatement percentages in various years?
14. Is this legislation in line with others in Connecticut or does it have aspects that break new ground?
15. (This is a catch all but I'm including anyway.) What has been the legal implications for municipalities that have such tax abatement legislation, especially when the municipality turns down requests for abatement?

Additional Questions submitted:

(b) Contracts for Abatement: Where does the money come from to pay for 1,2,3 or 4? Does it come out of the Owner's pocket? If it does, how does the Town ensure that the Owner spent the equivalent amount of the tax abatement? Also, purposes #2 and #4 could benefit market rate units in a mixed development of market rate and affordable units. For example, it would seem that money spent by the Owner could be used to build/renovate a new laundry room facility under #2 or #4, benefiting the market rate units as well.

(c) Term: Page two, lines 2, 3 and 4: to paraphrase, states that the abatement shall terminate when the "property" is not used "solely" for low and moderate income housing. This would seem to work for the AON development which will be used solely for low and moderate income forever, but it would seem to conflict with a property that has the required mix of 50/50 units of

low and moderate income housing with market rate units, as stated in line #7. Is this intended to cut off abatements when the units may be converted to market rate after 40 years in accordance with 8-30g? If so, does it also mean that an Owner of a 50/50 development who wants to continue the use of the 50/50 facility is forced to make the choice of either going 100% market rate or 100% affordable, but cannot continue a 50/50 mix?

Line #10 - #12: indicates that construction or rehabilitation of complying units must have begun after March 10, 2010. It also indicates that any contract for tax abatement "heretofore" and "hereafter" entered into... Are there any "heretofore" developments that comply with all of the above requirements? If not, why not remove "heretofore" and "hereafter"?