

MINUTES
TOWN OF DARIEN
REPRESENTATIVE TOWN MEETING
TGS&A COMMITTEE

January 11, 2009

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TOWN CLERK'S OFFICE
DARIEN CT.

Call to order: There being a quorum with nine out of 12 members present, the Chairman called the meeting to order at 7:30 p.m.

Present: John T. Whitehead (Chairman), Eugene F. Coyle, Joi Reiner Gallo, Holly Wade Kelly, Frank B. Kemp, Diana M. Nizolek, Bohdana Puzyk, Debra McGarry Richie, and Sarah C. Seelye,

Absent: Thomas W. Moore, Samuel B. Schoonmaker III, and Flora J. Smith.

New Appointee: Spencer McIlmurray, District II, was absent.

Agenda: The Agenda, as filed with the Town Clerk on January 7, 2010, was adopted by unanimous consent.

Minutes: The Minutes of the September 21, 2009 meeting were approved as presented by unanimous consent.

Chairman Assignments of Sub-committees: The Chairman described the following five Sub-committees with recommendations for Members to serve as Chair of these Committees, when there are matters at hand.

The Sub-Committees and the nominations for Chairmen of these Subcommittees are:

1. Fee for Town Services – Sarah Seely
2. Tax abatement for affordable housing – Sam Schoonmaker
3. Coed modification of health ordinances – Bohdana Puzyk
4. Open space legislation – Joi Gallo
5. Ethics – Tom Moore

At the present time, only the first topic is active, as the specific resolutions for the other topics are being prepared or reviewed by other groups. It was agreed that Sarah Seelye would discuss the next steps in this matter with the Chair of the Rules Committee and advise the Committee as appropriate.

Adjournment: There being no other business, the meeting was adjourned by unanimous consent at 7:50 p.m.

Recorded by:
/S/ Frank B. Kemp
Clerk of the Meeting

TGS & A

district	first name	last name	address	telephone (h)	e-mail addresses
III	Eugene F.	Coyle	15 Echo Drive	324-5446	none
II	Joi Reiner	Gallo	130 Five Mile River Road	656-1055	JoiRGallo@aol.com
VI	Holly Wade	Kelly	29 Stony Brook Road	918-0336	holly@home-darien.com
IV	Frank B.	Kemp	20 Seagate Road	656-1129	fkemp@optonline.net
II	Spencer J.	McIlmurray	27 Pheasant Run	655-1373	spencer.mcilmurray@att.net
III	Thomas W.	Moore	26 Georgian Lane	359-1812	thomas669@aol.com
V	Diana M.	Nizolek	8 Top O'Hill Road	357-7677	diananizolek@live.com
I	Bohdana	Puzyk	5 Country Club Road	329-3713	bpuzyk@optonline.net
V	Debra McGarry	Ritchie	16 Stony Brook Road South	656-9644	dritchict@gmail.com
IV	Samuel V.	Schoonmaker III	231 Old Kings Hwy So.	655-8455	svs3@sgcfamlaw.com
II	Sarah C.	Seelye	1 Siwanoy Road	656-3184	seelye5ct@aol.com
I	Flora J.	Smith	42 Hamilton Lane	655-4363	FSmith42@aol.com
VI	John T.	Whitehead	3 Pond Lane	655-3900	ehhead@optonline.net

Sub-Committees

Fees for Town Services	Chair - Sarah Seelye Frank Kemp
Tax Abatement - Affordable Housing	Chair - Sam Schoonmaker Holly Kelly Spencer McIlmurray Di Nizolek
Code Modification of Health Ordinances	Chair - Bohdana Puzyk Debra Ritchie Jack Whitehead
Open Space Legislation	Chair - Joi Gallo Holly Kelly Flora Smith
Ethics	Chair - Tom Moore Gene Coyle

January 11, 2010

Mr. John T Whitehead, Chairman
Mr. Samuel V. Schoonmaker III, Co-Vice Chairman
Ms. Sara C. Seelye, Co-Vice Chairman
RTM Members of the TGS & A Committee

Dear Chairmen and fellow committee members:

It is my understanding the RTM TGS & A committee will be taking into consideration the proposal to establish an ordinance whereby affordable housing projects in Darien could apply for property tax abatement.

I am also acutely aware that the current recommendation as passed to the RTM from the BOS was conceived by the Darien Housing Authority, is penned and strenuously championed by the DHA, and if enacted, the DHA will surely be the very first applicant in line to apply before the proverbial ink has dried. As such, it has been difficult for all to 'de-couple' what is supposed to be a general ordinance from the current debate over the AON plan. I suspect you do not disagree. I also suspect that members of the DHA will be present at your meeting this evening, presumably to provide input and/or answer questions and concerns.

I too, would like to would like to attend your meeting as I may offer a somewhat different view than does the DHA of the proposed tax abatement and its implications for AON and the town at large; but also to provide more general concerns as a resident and taxpayer of Darien. To that end, I offer the following observations in advance in hopes you and your fellow committee members wish to consider them and/or explore further:

1. The need for a tax-abatement ordinance seems completely unnecessary as there has been no lack of affordable housing applications in Darien, just the wrong kind. Neighborhood opposition has been the obstacle, not financial feasibility.
2. Granting abatement to any one project will expose the Town to very dangerous precedent they will be hard pressed to defend in denying others.
3. Attempting to segregate private and publicly financed projects by granting special or preferred status to quasi-governmental authorities such as the DHA carries its own special risks. Consider the P & Z Commission (P&Z) Resolution (03/10/09) amending the zoning regulations to rezone the AON property from R-1/3 SFR, to a DMR; anticipating private developers who might cite precedent, P&Z amended the zoning regulations by changing wording in Section 521, Background and Purposes (see exhibit A, pg 2, P&Z Adopted Resolution), to except from the regulation, "dwelling units of the Darien Housing Authority". The net effect is that the only the DHA may apply

for zone changes to a DMR for dwellings adjacent to existing or potential SFR zones, while all others are precluded from doing the same.

4. The danger is exactly what has transpired with AON; the DHA has partnered with a private **for-profit developer**, created a new partnership entity with that developer, and by virtue of an extended \$1/yr lease agreement (98 years) have transferred their property rights to that new entity. What is the difference then, between a private development and the DHA?
5. Chairman Conze has been made aware of this situation (see exhibit B, excerpts from Memo to Fred Conze, 11/27/09), as there appears to be a clear violation of the spirit of P&Z Commission intent; if not a direct justification to consider rescinding the March 10th Adopted Resolution.
6. Should the RTM decide to adopt a tax-abatement ordinance; the language needs to be very specific to avoid a similar violation. Such wording is not contained in the current proposal.
7. DHA projects can present unique circumstances with regard to impact on the Darien school system and consequently an extraordinary burden to the town budget. For example, unlike privately financed developments such as Avalon, empty bedrooms are not a tenant option at AON. A single person cannot say, decide to have a 2 or 3 bedroom unit for the luxury of keeping a guest bedroom or home office. The AON redevelopment proposal is for approximately 100 bedrooms besides the 107 needed for head-of-household. It is an absolute certainty that most or all of these bedrooms will be occupied by school age children, thus raising the current AON student enrollment from 27 to 100, or more. Refusing to acknowledge this very real liability (or at least venture as to who *will* be living in these bedrooms) the DHA has instead chosen to defer to an unqualified estimate from School Superintendent Fiftal. He states by virtue of experience with Avalon, that enrollment should only increase by a few students. This is a flawed projection as he is obviously not aware of, or did not take into consideration, the differing dynamics between public and private housing.
8. In addition to the impact on school budgets, any proposed affordable housing project will add substantial numbers of new dwelling units in need of police and fire protection, DPW services, and all other town services. These are compelling reasons to maintain property tax assessments at levels equal to those for market rate properties in anticipation of the increase in the associated costs where density levels will increase to as many as twelve (12) per acre.
9. A 'tax subsidy' from the town already exists at AON, so there is no urgency to enact a hurried tax abatement ordinance. DHA currently pays no tax on AON; and, their projected tax burden (\$30K per their budget) is a fraction of the

more than \$200K that would be paid if AON were a private development of 50 homes.

10. Also consider the dilemma posed by Allen-O'Neill Dr., which bisects the DHA property. The P & Z Resolution requires that DHA privatize the road, in part to circumvent parking regulations and town road guidelines; guest parking has been relegated to on-street (illegal in winter months on public streets), and road width will be less than the 26' town guideline; hence the privatization requirement. However, the DHA has asked the town to maintain the road through the DPW, as if it were still a public road. That may be considered tax abatement in and of itself.
11. Finally, my objection to abatement comes purely as a taxpayer. My 2010 taxes increased 22% over 2009 as a result of the 2008 reassessment. A recent headline in the Darien Times pronounced a possible 8% + increase in the mil rate next year. We have major capital projects on hold because of financial constraints. We need more tax revenues, not abatements.

In conclusion, I do not believe we need to create financial incentives for affordable housing projects through tax abatements. We need affordable housing that blends well into our single family residential neighborhoods. We need developments that offer mixed-use, architectural diversity, and include the possibility of affordable ownership giving residents a stake in the neighborhood. We need to avoid at all costs, those elements that tend to further segregate and stigmatize affordable housing projects from surrounding neighborhoods.

Thank you for your time and thoughtful consideration.

Peter L. Rogers
240 Noroton Ave
Darien, CT 06820

Exhibit A

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
AMENDMENT OF ZONING MAP #4-2008, AMENDMENT OF ZONING REGULATIONS #8-2008, SITE PLAN
APPLICATION #268, SPECIAL PERMIT APPLICATION #122-A, LAND FILLING & REGRADING
APPLICATION #219, LOT LINE REVISION
DARIEN HOUSING AUTHORITY, NOROTON AVENUE, ELM STREET, AND WEST AVENUE
MARCH 10, 2009

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and West Avenue. Proposing, as modified, to replace all but two of the existing single-family residences and apartment building which now comprise Allen-O'Neill Homes; abandon the existing Allen-O'Neill Drive; revise lot lines; construct 23 new apartment and townhouse structures containing 107 units of housing; construct one community building; install drainage facilities; and to perform related site development activities. APPROVED WITH CONDITIONS AND MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, MARCH 29, 2009 AT 12:01 PM.

Scheduled Date of Publication of Action:
March 19, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 850, 1000, and 1020 of the Darien Zoning Regulations for the Commission to approve the site development aspects of this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Amendment to the Zoning Regulations

The applicant proposes to amend the Darien Zoning Regulations by modifying certain sections in the DMR Zone (Section 520 et. seq.). The Commission acknowledges that the only other DMR Zone now in Darien is the AvalonBay property west of Hollow Tree Ridge Road and south of the railroad tracks. The Background and Purposes now in Section 521 is generally applicable to rezoning the subject properties as well, except that the phrase "...but it will not be adjacent to or adversely impact existing or potential single family residences." will need to be modified to now read "...but, **except for dwelling units of the Darien Housing Authority**, it will not be adjacent to existing or potential single family residences; and in no case, shall the new units adversely impact existing or potential single family residences."

The Commission believes that rezoning the subject properties to DMR, with the modifications approved herein is appropriate. The subject properties are within walking distance to Noroton Heights shopping district and the Noroton Heights Train Station. It is also within walking distance to McGuane Field, a Town park.

Recommendations on Page 6-3 of the 2006 Town Plan of Conservation and Development reads as follows:

5. *The Town should work with the Darien Housing Authority to ensure the viability and availability of affordable housing where and when possible. Also, consider the adoption of*

Exhibit B

Excerpts from Memo to Fred Conze

Date: 11/27/09
To: Fred Conze, Chairman P & Z Commission
From: Peter Rogers, 240 Noroton Ave., Darien, CT

P & Z predicated their decision to rezone AON to DMR based on the fact that the land was owned by DHA; and to eliminate the possibility of any future developers claiming a precedent had been set, you modify in **Amendment to the Zoning Regulations** (pg 2), the current reg regarding DMR zones which states, **"...but will not be adjacent to or adversely impact existing or potential single family residences." to read, "...but, except for dwelling units of the Darien Housing Authority, it will not be adjacent to existing...."**

It seems to me, that the DHA has circumvented the intent of P & Z, by using their quasi-governmental status to secure a zoning modification, only to confer ("tantamount to a donation of the land") that 'special status' upon a private entity (AON, LLC) whose partners include a For-Profit Developer. The LLC will actively manage the property through **Imagineers** who will draw a revenue stream from the project for the duration of the lease, in addition to their very hefty up-front development fee. In fact, the only named entities on the Development Plan presented to P & Z are the DHA, Crosskey Architects, and Imagineers. Considering the role of the For-Profit Developer and the 'tantamount donation of the land' by the DHA, what is the difference between this and the application of a private developer?

I am wondering if this is what was intended or anticipated by P & Z when you granted the zone change for DHA property only.

Here is a possibility: In light of this new information, P & Z decides to modify their March 10th Resolution to include language such as:

P & Z recognizes the redevelopment of AON by DHA will require the expertise of a professional co-developer. However to be consistent with the modification of zoning regulations intended expressly for DHA, their own stated goals and objectives, and to avoid the possibility of any conflicts of interest, co-developers will be limited to the Not-For-Profit type. **Further, DHA is restricted from effectively conveying any property interests or rights to any other parties either by agreements or leases.**

**ORDINANCE ESTABLISHING TAX EXEMPTION FOR CERTAIN HANDICAPPED
MOTOR VEHICLES**

1. Grant of exemption

The Town of Darien, pursuant to § 12-81c of the Connecticut General Statutes, hereby exempts from personal property taxation any ambulance-type motor vehicle which is used exclusively for the purpose of transporting any medically-incapacitated individual, except any such vehicle used to transport any such individual for payment. For purposes of this section:

AMBULANCE-TYPE VEHICLE shall mean any motor vehicle specially equipped or modified in a significant way for the purpose of transporting medically incapacitated individuals, including but not limited to the inclusion of special hand controls, lifts, ramps, the equipping of stretchers or other special seating and significant modifications to accommodate medical equipment such as oxygen or mechanical respirators.

USED EXCLUSIVELY shall mean the vehicle is used and devoted primarily and inherently for the purpose of transporting medically incapacitated individuals and does not mean vehicles partly for transporting medically incapacitated individuals and partly for other purposes.

2. Proof of modification required

Individuals requesting such exemption must show proof to the Town Assessor that the vehicle was modified for use by a handicapped individual or for the transport of a handicapped individual. Individuals requesting such exemption must show proof to the Town Assessor that the vehicle was modified with properly-installed digital/hydraulic gas/brake mechanisms/loading and unloading lift device (lift harness, motorized loading ramp) which is to be used to assist the physically-challenged individual and/or the transporter for physically-challenged individuals.

3. Application

Any person who desires to claim the exemption provided in this Article must file a written application annually with the Tax Assessor of the Town of Darien by October 3. Failure to file such application in the manner and form provided herein shall constitute a waiver of the right to such exemption for the assessment year.

4. Expiration of exemption

The exemption will expire when the vehicle is sold.

5. Effective Date

This article shall be effective for taxes due on the Grand List of October 1, 2009, and thereafter.