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REAL ESTATE PARTNERS, LLC

Senator Gary LeBeau
300 Capital Avenue
State Capitol, Room 110
Hartford, CT 06106

February 24, 2009

Gentlemen:

Senator LeBeau, Representative Berger, Senator Frantz and Representative Alberts, my name is Kim Morque and I am a Principal with Spinnaker Real Estate Partners based in Norwalk. I thank the committee for the opportunity to testify in support of Senate Bill 973 – An Act Concerning the Definition of Median Income in Enterprise Zones for Assessment Purposes.

Our company is a small business that develops, owns and operates property; we employee fifteen people and outsource services to many times that amount. In recent years we have completed projects in redevelopment areas including communities that have Enterprise Zone designations. Some projects have been mixed use including residential apartments and are eligible for assessment deferral. The current statute is flawed and inconsistent in so far as it lacks a clear standard for defining median income in Enterprise Zones.

SB 973 provides a clear source for "median family income" for the Enterprise Zone administration, and by doing so, provides the development community, the Department of Economic and Community Development and local redevelopment authorities a standard for administering the assessment deferral. This language passed the Senate last session but then the clock ran out in the House. The Enterprise Zone administration will be clear and consistent with this revision and all parties will be on the same page when evaluating projects and monitoring compliance.

The proposed language does not change the income levels or the administration of the program – it simply establishes a transparent and reliable standard. The fiscal note from last year's amendment (LCO 7869 on SB 1087) which contained this language stated "the amendment conforms statute to current practice and therefore has no fiscal impact." The current law does not use the national standard for income data used by all housing-industry related entities. The income it references is not updated annually by the US Census. SB 973 will utilize the HUD Metro Fair Market Rent Area ("HMFA"); formerly known as the PMSA. HUD data is updated annually and is the metric used by lenders, bond financing organizations, and housing authorities across the country as the most consistent and reliable income data.

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Attached to my testimony is an OLR Report and Memorandum from the Office of the Attorney General that provide additional background on the issue. In addition, we have been working in partnership with the Department of Economic and Community Development on this issue and the Norwalk delegation is aware of and supports this change. I thank the Committee for its attention.

Regards,

Kim Morque

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State of Connecticut

MEMORANDUM

TO: Joseph Oros
Chief of Staff
Department of Economic and Community Development
505 Hudson Street
Hartford CT 06106-7106

FROM: Paul K. Pernerewski
Assistant Attorney General

RE: Median Family Income

DATE: September 29, 2008

THIS MEMO IS NOT INTENDED NOT SHALL IT BE CONSTRUED AS AN OFFICIAL OPINION OF THE ATTORNEY GENERAL OF CONNECTICUT BUT MERELY REFLECTS THE LEGAL OPINION OF ITS AUTHOR.

I am writing in response to your request for legal advice as to whether the Department of Economic and Community Development (the "Department") should rely on the decennial census for determining "median family income" for purposes under Conn. Gen. Stat. § 32-71, which provides in part that "no dwelling unit in a property granted the deferral may be rented to any person having a family income in excess of two hundred percent of the median family income in the municipality." You indicated that median family income for a municipality may change considerably over the ten year period between censuses, rendering the initial median family income amount less reliable.

The plain language of this statute does not bind the Department to any particular source for "median family income." Therefore, the Department has the discretion to choose any source for this information that the Department determines to be reliable and accurately reflecting median family income for a municipality.

A review of state law finds that when the legislature desired to limit the source of income data to the decennial census, the General Assembly used the phrase "as determined by the most recent United States census." See, Conn. Gen. Stat. § 32-70. It is noteworthy that the legislature recognized the concern regarding the potential for updating ten year old information as it added the phrase "as officially updated by the appropriate state agency or institution." Id. In another section, the legislature used the words "current median family income for a family of four in the Standard Metropolitan Statistical Area, as designated in the federal census." Conn. Gen. Stat. § 8-302.

Similarly, when the General Assembly intended to require other specific sources for income information, it has clearly identified those sources, including "median income as determined by the United States Department of Housing and Urban Development." Conn. Gen. Stat. § 8-2g; and "the most recent state median income figures published by the Department of Social Services." Section 6 of Public Act 08-1, August Sp. Sess. 2008.

Therefore, the Department may use any source of median family income that it determines to be reliable measure of income for the municipality.

Paul K. Pernerewski
Assistant Attorney General

OLR RESEARCH REPORT

August 20, 2008 2008-R-0461

ENTERPRISE ZONE PROPERTY TAX EXEMPTION

For: Honorable Bob Duff
By: John Rappa, Principal Analyst

You asked for the legislative intent and history of the statute authorizing the seven-year property tax deferral for improving residential property in enterprise zones. You specifically wanted to know if (1) a state agency oversees how municipalities administer this statute, (2) municipalities must adhere to its income criterion, and (3) that criterion is consistent with those found in similar statutes.

Some of these questions require a formal legal opinion, which the Office of Legislative cannot give. Consequently, you should not regard this report as providing one.

SUMMARY

Municipalities must phase in over seven years the assessed value of improvements made to residential property in the 17 enterprise zones. They must defer 100% of that value during the first two years after the improvements were completed and then reduce that percentage in each of the remaining years according to a statutory schedule.

But they must automatically end the deferrals if the income of the occupants of the improved property rises above 200% of the municipality's median family income. This requirement applies to newly constructed or rehabilitated rental units and rental units converted into condominiums.

The legislature adopted the deferral and the 200% threshold as part of the 1981 act that launched the Enterprise Zone Program. It subsequently amended the deferral without changing that threshold. The legislative record does not indicate why the legislature adopted or retained the threshold. It suggests only that legislators believed the deferral and the other enterprise zone incentives were needed to stimulate property improvements in the zones, which are generally economically distressed areas.

The statute's plain language and legislative history indicate that municipalities must provide the deferral as long as the occupants meet the income criterion. But the statute assigns no state agency to oversee how municipalities administer the deferral. Consequently, a property owner denied a deferral must appeal to Superior Court.

Other laws allow municipalities to exempt or abate property taxes on residential property. Most allow them to do so based on the occupants' income or the property's location. Municipalities may offer these incentives in enterprise zones on top of, but not in lieu of, the seven-year deferral.

LEGISLATIVE HISTORY

PA 81-445

Analysis. This act established the enterprise zone program, which provides different financial incentives to people and businesses that construct or rehabilitate property in relatively small, economic depressed areas. The act limited the number zones to six and specified a process for local zone designation and state approval. The process is administered by the Department of Economic and Community Development (DECD).

The enterprise zone designation qualified property owners in the zones for loans and grants, business tax credits, sales tax exemptions, and seven-year property tax deferrals. The act required municipalities to defer 100% of the assessed value of any real property improvement for seven years and adopt implementing ordinances (CGS § 32-71).

Under the act and the ordinance, property owners automatically qualified for the deferral for constructing or rehabilitating property in the zone. But those constructing or rehabilitating rental units or converting rental units into condominiums had to rent or sell the units to people whose incomes did not exceed 200% of the municipality's median family income. The deferral immediately ceased if the owners rented or sold these units to people whose incomes exceeded this threshold.

The deferral appeared to have superseded an earlier law providing state-reimbursed property tax exemptions for improving factories and other manufacturing facilities in targeted areas (PA 78-357, codified at CGS § 12-81 (59)). Consequently, the act would have required municipalities to absorb the revenue loss from deferrals granted to manufacturers in the enterprise zones while being reimbursed for exemptions granted to manufacturers outside the zones. (A subsequent act fixed this problem by restricting the zone deferral to nonmanufacturing property.)

Legislative Intent. The legislature saw the seven-year property tax exemption as a key part of the enterprise zone program. During the Senate debate, Senator Post stated that this and the act's other incentives "will make it attractive, hopefully, for the private sector to come to the aid of our cities" (*Senate Proceedings*, May 27, 1981, p. 4798). Post specifically mentioned how "property taxes would be frozen for a period of time within the enterprise zone."

During the House debate, Representative Meyer explained how the tax credits and exemptions advanced the enterprise zone program's goals. "And the whole idea of it is to target areas that currently produce virtually no tax revenue and try to build them up so that even though we are giving a great deal of tax credit, remember that these are in areas that are producing very little credit at the present time" (*House Proceedings*, Monday 1, 1981, p. 9209).

PA 82-435

Analysis. This act's comprehensive changes to the Enterprise Zone Program included reducing the value of the seven-year deferral and narrowing the types of property that qualified for it.

The initial enterprise zone law required municipalities to defer 100% of an improvement's assessed value for seven years. The 1982 act reduced the value of the deferral by 50% by phasing it out over that period. The act started the deferral at 100% of the improvement's assessed value in the first two years and then dropped it to 50% in the third year. It continued phasing out the deferral during the remaining four years by reducing it by 10% annually.

The act also restricted the deferral to nonmanufacturing property, because manufacturers already qualified for a five-year, 80% state-reimbursed exemption that was authorized under PA 78-357.

The act created a new enterprise zone benefit by allowing municipalities to exempt or abate property taxes on any property regardless of whether it had been improved. It is not clear if a municipality can extend these optional benefits to a property owner receiving the mandated seven-year deferral.

Lastly, the act addressed how municipalities must provide the deferral when it simultaneously implements a revaluation. During a revaluation, a municipality redetermines each property's fair market and assessed value, which reflect such factors as market demand and recent improvements. If it implements a revaluation when an owner completes the improvements, the municipality must determine the change in value due to the improvements and defer only that value over the next seven years. It must assess the change in value due to other factors at the full amount (i.e., 70% of fair market value).

Legislative Intent. During the Senate debate, Senator Wilber Smith stated that municipalities asked the legislature to reduce the value of the deferral. "So consequently, listening to municipalities we have also revised that section calling for 100% tax—property tax deferral for a seven-year period. We have created a section which would do it in stages, deferring the property taxes for the first two years 100%, decreasing at a 10% level until the seventh year" (*Senate Proceedings*, April 26, 1982, p. 2402).

PA 83-558

This act allowed municipalities to extend the optional property tax exemptions and abatements to real and personal property. PA 82-435 restricted them to real property. During the House debate, Representative Smoko explained that extending the optional exemptions to personal property would "make the enterprise zones more attractive for the location and expansion of business opportunities within those zones" (*House Proceedings*, June 2, 1983, p. 7703).

PA 94-241

This act allows municipalities to negotiate a different exemption schedule for improvements made to commercial or retail property costing over $80 million. The legislative record provides no information about why the legislature made this change.

PA 00-194

This act barred municipalities from taxing the improvements made to real property before they are completed. During the Senate debate, Senator Looney explained that the bill prevented the "anomaly" of municipalities taxing the improvements while they were being made and exempting them after they were made (*Senate Proceedings*, April 25, 2000 (no page reference). Representative McDonald made a similar point during the House debate (*House Proceedings*, May 2, 2000 (no page reference).

COMPARISON OF HOUSING-RELATED PROPERTY TAX INCENTIVES

As Table 1 shows, several statutes authorize municipalities to provide property tax benefits for housing. Among these, CGS § 12-65d is most similar to the enterprise zone benefit because it too authorizes municipalities to defer assessment increases in a designated "rehabilitation area." But it differs from the enterprise zone statute because it allows municipalities to decide whether to offer the benefit and imposes no criteria for designating areas or determining a property owner's eligibility for the benefit.

Arguably, a municipality could designate a rehabilitation area that encompasses all or part of an enterprise zone. But doing so does not appear to relieve it from complying with CGS § 32-71 because that statute mandates the enterprise zone benefit without exception. The benefit under CGS § 12-65d would be in addition to that under CGS § 32-71.

CGS § 12-65 also restricts its exemption to a designated development area, which must be included in a municipal development plan. But, unlike the enterprise zone benefit, its exemption remains constant during the term the statute specifies.

Like the enterprise zone benefit, CGS § 8-215's benefit is tied to income. It allows municipalities to abate or reduce the taxes on housing constructed or rehabilitated with government funds and occupied by low- and moderate-income people and families. Under most housing programs, a person or family meets this criterion if it earns no more than 80% of the area's median income. The statute imposes no time limit on the abatement.

The enterprise zone statute, on the other hand, requires municipalities to defer the increase in the assessment resulting from the improvement, sets the income limit at 200% of the municipality's median family income, and phases out the deferral over seven years.

The other benefits shown in Table 1 are time-limited tax exemptions that, unlike the enterprise zone exemption, remain constant throughout the exemption period. The statutes authorizing these optional exemptions do not restrict them to a specified income group.

Table 1: Housing Related Property Tax Incentives

CGS §	*Incentive Type*	*Income Requirement*	*Other Requirements*
32-71	Deferral of improvement's assessed value according to statutory schedule	Rental or condominium occupants' income households cannot exceed 200% of municipality's median income during deferral period	No
8-215	Reduction in taxes owed	Housing must be for low- and moderate-income, as defined by the state or federal program that funded the improvement. Household usually meets this criterion if it earns no more than 80% of the median income for the area in which it resides	No
12-65	15- or 16-year exemption	No	Housing must be located in a locally designated area included in a development plan
12-65b	Exemption; period depends on the value of the improvements	No	No
12-65d	Deferral of improvement's assessed value according to statutory schedule	No	Deferrals limited to housing in locally designated rehabilitation areas

JR:ts