



CITY OF STAMFORD, CONNECTICUT
INTER-OFFICE CORRESPONDENCE

To: Kathryn Emmett, Esq.
From: Dana B. Lee, Esq. (Electronically signed: /DLEE)
Copy: Cynthia Anger, Esq; Judith Isidro
Date: April 21, 2020
RE: Opinion Re: Use of BMR Fee-in-Lieu Funds

Issue: The City of Stamford maintains a fund where monetary contributions are deposited in-lieu of the development of Below Market Rate housing. For what purposes can these “fee-in-lieu” funds be used?

Brief Answer: The purpose of the relevant zoning regulation is to increase the amount of Below Market Rate (“BMR”) housing in the City, and the funds may only be used for this purpose.

Discussion:

Stamford Zoning Regulations, Article III, Section 7.4(C)(4)(d) provides that an alternative method of complying with the BMR requirement is a “fee-in-lieu” payment. This section references the fund at issue. Section 7.4(C)(4)(d)¹ provides that “(a) BMR requirement

¹ Section 7.4(C)(4)(d) provides, in its entirety that “(a) BMR requirement may be satisfied, in whole or in part, through the payment of a **“fee-in-lieu” cash contribution to a City of Stamford fund, or other approved non-profit or for-profit organization dedicated to affordable housing initiatives.** Notwithstanding any other provisions of this Section 7.4 to the contrary, the cash contribution shall be determined based on the number of BMR units otherwise required to be constructed on-site and the current SMSA median household income for a family of four persons, and the following criteria for each of three required affordable income ranges: BMR units affordable at the 25% of SMSA family income level shall require a cash contribution not less than 240% of the SMSA median income; BMR units affordable at the 50% of SMSA median family income level shall require a cash contribution not less than 145% of the SMSA median income; and BMR units affordable at the 60% of SMSA median family income level shall require a cash contribution not less than 110% of the SMSA median income. Where the contribution is targeted to assist an identified off-site project providing affordable housing, the Board shall condition the issuance of certificates of occupancy for the development project with

may be satisfied, in whole or in part, through the payment of a **“fee-in-lieu” cash contribution to a City of Stamford fund, or other approved non-profit or for-profit organization dedicated to affordable housing initiatives.”**

Section 7.4(C)(4)(d) and its reference to “a City of Stamford fund,” does not, by itself, answer question at hand. As a result, the resolution of this issue requires the application of well-established rules of statutory construction to the provisions of the Stamford Zoning Regulations.² To that end, “(i)t is a basic tenet of statutory construction that the intent of the legislature is to be found not in an isolated phrase or sentence but, rather, from the statutory scheme as a whole.” (Citations omitted; internal quotation marks omitted.) *State v. Brown*, 235 Conn. 502, 516, 668 A.2d 1288 (1995). In addition, Courts must always construe a zoning regulation “in light of its purpose.” *Heim v. Zoning Bd. Of Appeals of Town of New Canaan*, 289 Conn. 709, 718 (2008), quoting, *West Hartford Interfaith Coalition v. Town Council*, 228 Conn. 498, 508 (1994). Moreover, “[a] statute ... should not be interpreted to thwart its purpose.” *Id.*

The intended purpose of this “fund” is arrived at, then, in reference to the statutory scheme established by the Zoning Regulations as a whole. To that end, the starting point is Article 1, Section 2(B) of the Stamford Zoning Regulations. This section provides in pertinent part, that **“(i)n their interpretation and application, the provisions of these regulations shall be held to be adopted for the purposes stated herein.”** (emphasis added).

The purpose of the Below Market Rate provisions of the Stamford Zoning Regulations is set forth in Article III, Section 7.4(A).³ This section speaks exclusively to the development and

the completion of the off-site affordable units and/or establish other reasonable performance conditions necessary to insure that the off-site BMR units will be built in a timely manner. (205-11) (209-08)

CALCULATION OF CASH PAYMENT, 50% AMI – YEAR 2011 2011 Median
Income, Family of Four = \$126,600 Cash Payment = 145% x \$126,600 = \$183,570.

² “[Z]oning regulations are legislative enactments ... and therefore their interpretation is governed by the same principles that apply to the construction of statutes.” (Citation omitted.) *Wood v. Zoning Board of Appeals*, 258 Conn. 691, 699, 784 A.2d 354 (2001). “When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature ... In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply ... In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered ... The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation.” (Internal quotation marks omitted.) *Tayco Corp. v. Planning & Zoning Commission*, 294 Conn. 673, 679, 986 A.2d 290 (2010).

³ Article III, Section 7.4(A) reads, in its entirety, that:

production of affordable housing. Section 7.4(A) provides, in pertinent part, that “(t)o address the continuing loss of affordable housing, coupled with the increasing affordability gap and growing housing demand, the City of Stamford has established the goal of producing a minimum of 8,000 affordable housing units, in addition to what is currently available.” Moreover, Section 7.4(A) provides that “as a key element of a coordinated housing strategy, that the City’s Zoning Regulations incorporate a mandatory inclusionary housing requirement, with appropriate incentives....” And that, “(b)ecause remaining opportunity for new residential development within the city is limited, it is essential that a reasonable proportion of new development be devoted to housing that is affordable to low and moderate income residents and working people.” Finally, Section 7.4(A) concludes that, in order “to implement the policies of the Master Plan, it is essential that new residential development contain housing opportunities for households of low and moderate income, and that the City provide a regulatory and incentive framework that ensures development of an adequate supply and mix of new housing to meet the future housing needs of all income segments of the community.”

In addition to the stated purposes of the Below Market Rate provisions of the Zoning Regulations, the “fund” is created by Stamford Zoning Regulation, Article III, Section 7.4(C)(4), which provides that the Zoning Board may approve proposed alternative methods of satisfying a BMR requirement, including “the payment of an appropriate in-lieu housing fee.” This section specifically requires that “(a)ny such proposal shall demonstrate to the satisfaction of the Zoning Board that the alternative method(s) is desirable and will further affordable housing opportunities in the City to a greater extent than the provision of on-site BMR units, either through the production of a greater number of affordable housing units and/or larger bedroom size units and/or units for families below the required targeted income brackets.” A fund that is dedicated

“The Master Plan establishes the goal of providing decent, affordable housing for all of the residents of Stamford, whatever their economic conditions. To address the continuing loss of affordable housing, coupled with the increasing affordability gap and growing housing demand, the City of Stamford has established the goal of producing a minimum of 8,000 affordable housing units, in addition to what is currently available. The Master Plan recommends, as a key element of a coordinated housing strategy, that the City’s Zoning Regulations incorporate a mandatory inclusionary housing requirement, with appropriate incentives, consistent with established planning principles and contextual development. The inclusionary housing program defined herein is necessary to provide continuing housing opportunities for low and moderate income households and working people. It is necessary to help maintain a diverse housing stock and to allow working people to have better access to jobs and upgrade their economic status. The regional trend toward increasing housing prices will, without intervention, result in inadequate supplies of affordable housing and will negatively impact the ability of local employers to attract and maintain an adequate work force. Because remaining opportunity for new residential development within the city is limited, it is essential that a reasonable proportion of new development be devoted to housing that is affordable to low and moderate income residents and working people.

to increasing the number of BMR units in Stamford meets this requirement. A fund that can be used for other unrelated purposes, does not.

Finally, Stamford Zoning Regulation, Article III, Section 7.4(B) states that “the regulations are enacted under the authority of the Charter of the City of Stamford and Section 8-2(i) of the Connecticut General Statutes.” (emphasis added). The citation to General Statute Section 8-2(i) is likely the result of a scrivener’s error. (emphasis added). There is no Section 8-2(i) in the Statutes. There is a Connecticut General Statute Section 8-2i, however. This statute grants municipal zoning authorities the authority to implement “inclusionary zoning” regulations. *Connecticut General Statutes* Section 8-2i(b). Section 8-2i(a) defines “inclusionary zoning” to mean:

any zoning regulation, requirement or condition of development imposed by ordinance, regulation or pursuant to any special permit, special exception or subdivision plan which promotes the development of housing affordable to persons and families of low and moderate income, including, but not limited to, (1) the setting aside of a reasonable number of housing units for long-term retention as affordable housing through deed restrictions or other means; (2) the use of density bonuses; or **(3) in lieu of or in addition to such other requirements or conditions, the making of payments into a housing trust fund to be used for constructing, rehabilitating or repairing housing affordable to persons and families of low and moderate income.**

Stamford’s Below Market Rate Zoning Regulations set forth in Article III, Section 7.4 qualify as “inclusionary zoning” as defined by Connecticut General Statute Section 8-2i(a). The fund referred to in Zoning Regulation Section 7.4(C)(4)(d) is undoubtedly a reference to the housing trust fund authorized by General Statute Section 8-2i(a). In accordance with this Statute, the fund is “to be used for constructing, rehabilitating or repairing housing affordable to persons and families of low and moderate income.”

In light of these provisions, it is clear the intended purpose of the fee-in-lieu fund is to further the development of Below Market Rate (“BMR”) housing in the City. This would include using the fund for constructing, rehabilitating, or repairing BMR housing in the City. In accordance with Article 1, Section 2(B) we are required to conclude that the fund was adopted for this purpose, as authorized by Connecticut General Statute Section 8-2i. Nothing in the Zoning Regulations indicates that the fund was established for any other purpose. Using these funds, then, for any other reason would thwart their intended purpose and is not permissible.