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CITY OF DANBURY
OFFICE OF THE CORPORATION COUNSEL
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

February 26, 2007

Hon. Mayor Mark D. Boughton
Hon. Members of the Common Council
155 Deer Hill Avenue
Danbury, CT 06810

Re: BRT Brookview, LLC Tax Assessment Deferral – Crosby Street
February Agenda Item No. 35

Dear Mayor and Council:

This office has been asked to provide an opinion to the Common Council with respect to the petition of Council members (February Item no. 35) seeking to rescind a tax deferral earlier granted to BRT Brookview, LLC for a residential apartment complex at 30 Crosby Street.

City of Danbury Code of Ordinances Section 18-25, first adopted in 1997 pursuant to Connecticut enabling legislation (CGS Sec. 12-65b) permits, upon application to the city, the deferral of assessment increases for improvements to "...real property, air space and all improvements thereon or therein and to be constructed thereon or therein..." Such deferrals would apply to, among other improvements "...within the CCBD zoning district, for *permanent residential use...*", a classification also permitted in the State enabling legislation. The preamble to Code Sec. 18-25 states, in essence, that such deferrals are intended to "encourage economic development" and "continued economic vitality".

By application dated December 16, 2004, and signed by Daniel E. Bertram, Executive Vice President of BRT Brookview, LLC, BRT requested a seven (7) year, 100% tax deferral for the proposed "*Construction of 115 unit apartment building*" at an estimated cost of \$10,200,000.00. This was the only definition or description of the proposed improvement provided in the Application as filed. "Apartment building" or "apartment house" is commonly defined (Webster's Dictionary) as "a building containing separate residential apartments". It is also defined in the City Zoning Regulations as "A building or integrated group of buildings not less than four (4) stories in height housing dwelling units under single ownership, condominium ownership, or in cooperative ownership, arranged to be occupied by four (4) families or more living independently but with common services." "Family" is also defined in said Regulations, and permits "single housekeeping units" either related by blood, marriage or adoption, or not, or a combination thereof, provided they live together as a single housekeeping unit in a number not to exceed three (3).

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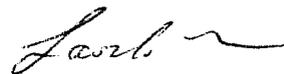
In the process of our review, we looked for submissions in the (public) record from BRT regarding commitments to build "middle income market rate housing for families" or, in the alternative, "private dormitory" construction (quoted language is taken from Item No. 35 letter dated January 10, 2006). Nothing in these records (i.e. meeting or committee minutes, written applications) evidences an intent to favor either option with any degree of specificity sufficient to alter the approval that was finally granted by you in April 2005. In fact, other than the language in BRT's Application referenced above, only the minutes of the Council committee meeting of March 7, 2005 has any reference to the proposed Crosby Street project, and therein it is recorded that "Mr. Bertram stated that the Crosby Street project will have 115 units..." The full Council received those minutes and acted to authorize the Mayor to execute the deferral agreements for both the Crosby Street and Kennedy Avenue projects.

Finally, there is no contrary or contravening language in the Agreement to Defer Increase in Tax Assessment, as executed by both parties in May 2005 that would act to alter the foregoing information. Pursuant to that Deferral Agreement (Article 3), the only circumstances where such an arrangement would be abrogated are in cases where the property owner was delinquent in its taxes, transferred the property to someone who did not agree to assume the deferral agreement, failed to conform to design criteria and specifications as approved in the deferral Agreement and/or the property was not used for purposes authorized in Section 18-25 of the Code of Ordinances.

Given the fact that the applicant's description of the intended use of the property in its deferral Application was largely general in nature and indicated only that the "Description and Use of Construction or Improvement" would be for a "115 unit apartment building" and the Council and City granted its approval based on that language, the possibility that the apartment building may ultimately have occupants unidentified at the time of the original Application or an occupant class that has been changed as a result of a market need is, therefore, insufficient to rescind the approval of the deferral.

Thank you for the opportunity to provide a review of this question. Please do not hesitate to contact me in the event you have any further concerns or questions regarding this.

Very truly yours,



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Deputy Corporation Counsel

cc: Robert J. Yamin, Corporation Counsel
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Llp/BRTBrookview7

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