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CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

PLANNING COMMISSION
(203) 797-4525
(203) 797-4586 (FAX)

October 25, 2012

To: Mayor Mark Boughton
Members of City Council

From: Planning Commission

Re: 8-24 Referral/September 2012 City Council Agenda Item #4 - DXR Holdings LLC,
Wallingford Rd. Request to Release Deed Restriction.

The Planning Commission has received a request from the City Council for a report pursuant to CT General Statutes/Sec 8-24, regarding the above referenced item.

At the September 19, 2012 meeting, the Planning Commission voted to give a negative recommendation to this request because the Industrial district zoning regulations were recently revised to ensure that only uses compatible with the purpose and intent of the industrial zones are permitted in these zones. Since the intent of this deed restriction was to maintain this land for airport uses, changing it could expand the permitted uses in the zone, which would be inconsistent with the Zoning Commission's previous actions.

Mr. Keller made the motion to give this a negative recommendation, Ms. Hoffstaetter seconded the motion and it was passed unanimously with ayes from Mr. Ferguson, Mr. Urice, Mr. Keller and Chairman Finaldi.

Arnold E. Finaldi Jr.
Chairman

AEF/jr
Attachment

c: Engineering Dept.
Corporation Counsel



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CITY OF DANBURY

155 DEER HILL AVENUE

DANBURY, CONNECTICUT 06810

DANBURY MUNICIPAL AIRPORT
P.O. BOX 2299
DANBURY, CT. 06813-2299

AIRPORT ADMINISTRATOR
PAUL D. ESTEFAN
(203) 797-4624

November 25, 2012

Mayor Mark D Boughton

Honorable Members of the City Council

Dear Mayor Boughton & Hon. Members of the City Council,

I am responding to your referral to the Office of the Airport Administrator regarding item #4 on the September meeting DXR Holdings, LLC Wallingford Road.

DXR Holdings, LLC. Located on Wallingford Road is requesting to amend or release their Deed Restrictions that run with the Land.

In reviewing the Deed I found that at a Town Meeting on December 28, 1948 it voted to authorize the Board of Selectman to enter into the sale of the Property to Clifford Sadler with Deed restrictions attached to the land. The Deed restrictions clearly state what the property can be "solely used for the following purposes: the sale of airplanes; airplane parts and gasoline; the storage of airplanes; the repair and overhauling of airplanes and airplane engines; and the manufacture of airplane parts, and this covenant shall be construed as a covenant running with the land."

The actions of the Town of Danbury placed the City in my opinion in a position to be in compliance with the Future Federal Aviation Administration rules, regulations, policies and sponsor assurances. The Town sold the property with these deed restrictions thus keeping the integrity of the property to be solely used for aeronautical purposes and nothing more.

The FAA Sponsor Assurances that we accept when we receive a Federal Grant have items such as #5 "Preserving Rights and Powers"

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- a. It will not take or permit any action which would operate to deprive it of any rights and powers necessary to perform any or all of the terms, conditions, and assurance in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

The FAA sponsor assurance # 21 "Compatible Land Use"

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.

The applicant on October 29, 2012 wrote to the FAA the following;

First, this statement:

Currently Danbury Airport is maximized with respect to maintenance and repair facilities and charter and flight school operations. To add another one of these uses would have a negative impact on the other like kind business at Danbury Airport.

FAA Response

That is not something the airport (must less a potential competitor) can say - should the sponsor make that statement, and more importantly act on it to deny eligible and qualified aeronautical service providers the opportunity to have access to the airport, the sponsor greatly risks compliance with grant assurance 22. We have precedent on this.

Secondly, this statement:

I believe that amending the restriction to include some more up-to-date aviation-related services might in fact place the City in a better position with respect to compliance with its Grant Assurances to the FAA than what now exists (although I am only seeking to add one addition use at this time).

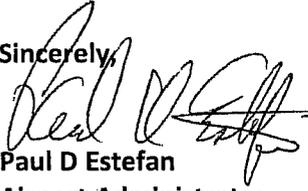
FAA Response

Restaurants are not "aviation-related services." Out of date or "up-to-date" they are not in any way aviation related. The handbook 5190.6B even says catering is not too. I can't conceive of any scenarios where allowing non aeronautical business such as a restaurant over aeronautical development, and airport ops and mix, plus safety, will help the sponsor be in "a better position with respect to compliance with its Grant Assurances."

The one item that has not been brought up by the applicant is the Fair Market Value of the Deed Restriction being lifted. In all of these discussions from day one I have no correspondence regarding what the Fair Market Value of the Deed Restriction is worth and no offer to pay the City for its release.

In closing I cannot recommend to the Mayor, City Council that the lifting of this Deed Restriction is in the Best Interest of the City of Danbury given the fact we have a burden under the FAA Sponsor assurances to be in compliance at all times. If we violate these assurances we could possibly become ineligible for FAA grant monies to do Capital Programs for all the airport users.

Sincerely,



Paul D Estefan
Airport Administrator
Danbury Municipal Airport

Cc; File Estefan100



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

November 26, 2012

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

Re: September Council Agenda Item #4
DXR Holdings, LLC letter requesting release/broadening of deed restriction

Dear Mayor Boughton and Council Members:

Please accept this letter in response to your request for a report concerning the above matter. The correspondence referred to above from Attorney Robin Kahn requests that the City Council release or broaden a deed restriction which encumbers a parcel of land located at the Danbury Airport now owned by her client DXR Holdings, LLC. The deed restriction provides that the property "shall be used solely for the following purposes: the sale of airplanes; air plane parts and gasoline; the storage of airplanes; the repair and overhauling of airplanes and airplane engines, and the manufacture of airplane parts".

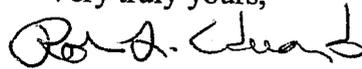
It is our understanding that the Planning Commission issued a negative recommendation on the modification of the current deed restriction. As mentioned in the Department's staff report, the release or broadening of the current deed restriction would serve to negatively impact the City's tireless work to ensure that the land adjacent to be airport be used for purposes related to the airport and in accordance with the Zoning Regulations and FAA requirements, and additionally, the integrity of the IL-40 zone could be negatively impacted by the release or broadening of the covenant.

It is our further understanding that the Airport Administrator has issued a negative recommendation regarding the proposed deed change. The Federal Aviation Administration ("FAA") has in written correspondence to the Airport Administrator cautioned, among other things, that airport sponsors such as the City "must plan appropriately for hazard mitigation...and compatible land use" in order to remain in compliance with federal grant conditions. In that regard the Planning Department has expressed concern about changing the zoning regulations to accommodate the proposed use. Additionally, the FAA also indicates that the City should further review other areas to ensure it maintains continued compliance with its federal obligations.

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If the Council decides that due to the negative reports, recommendations and concerns that it does not wish to pursue this matter further, then it is appropriate for you make a determination to "take no action". However, if the Council, notwithstanding the above mentioned negative reports, recommendations and concerns, remains inclined to consider the proposed deed amendment, this office respectfully requests that you continue that matter for an additional time period of sixty (60) days to review the legality of such a proposed modification to the existing deed restrictions imposed by the Town of Danbury in 1948. If you have any questions, please feel free to contact me.

Very truly yours,



Robin L. Edwards
Assistant Corporation Counsel

cc: Robert J. Yamin, Corporation Counsel
Laszlo L. Pinter, Deputy Corporation Counsel
Dennis I. Elpern, Planning Director
Paul D. Estefan, Airport Administrator