




WESTPORT CONNECTICUT

PLANNING & ZONING
TOWN HALL, 110 MYRTLE AVENUE
WESTPORT, CONNECTICUT 06880
(203) 341-1030 • (203) 341-1079
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Memorandum

To: Members, Planning and Zoning Commission
From: Mary Young, Deputy Planning and Zoning Director 
Date: March 3, 2011
Re: Text Amendment #625/Appl. #11-001, *Responses to Issues Raised at 2/17/11 Hearing*

At the 2/17/11 Public Hearing, the following four (4) questions were raised by individual members of the Planning and Zoning Commission and the following responses are offered by P&Z Staff and others as applicable:

1. *Does the Fire Department currently have the necessary equipment to respond to emergencies at a multi-story building(s) occupied by elderly housing/assisted living/skilled nursing, as proposed pursuant to §32-15, Senior Residential Community?*

Yes. The Deputy Fire Chief in a memorandum dated 2/18/11, confirmed the Westport Fire Department from an operational standpoint is prepared to respond to emergencies that may occur in a future development pursuant to Amendment #625, *see attached from Jon Gottfried.*

2. *Does the State of Connecticut consider assets when reviewing whether applicants are eligible for affordable dwelling units pursuant to C.G. S. §8-30g?*

Yes and No. Planning and Zoning staff contacted Michael Santoro of the State of Connecticut Department of Economic and Community Development (DECD) who confirmed in an email dated 2/22/11, that interest earned from an asset is considered income, but not the asset itself. The HUD model for income determination when dealing with assets is recommended by DECD, *see attached from HUD.*

3. *May preferences be given to local residents in below-market-rate developments that include the following facilities: Independent Living, Assisted Living, or Full-Care Living (a.k.a. Skilled Nursing) while simultaneously remaining in compliance with the Fair Housing Act and the operational requirements of various federal funding sources?*

See attached memorandum from the Town Attorney's Office dated 3/3/11.

4. *What is the current composite of local residents residing in local developments that have below-market rate dwelling units and are operated by the Westport Housing Authority or other non-profit agencies who receive federal funds? How do these agencies administer openings including any local preferences?*

See attached memorandum from the Human Services Department.



DEPARTMENT OF FIRE SERVICES

Administration (203) 341-5000

Fax (203) 341-5009

CHRISTOPHER G. ACKLEY

Chief of Department

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FEB 18 2011

WESTPORT P. & Z. C.

TO: Lawrence Bradley Planning and Zoning Department
FROM: Deputy Chief Jon Gottfried
DATE: February 18, 2011
RE: Proposed Housing Complex Baron's Property South

With regard to our discussion this afternoon about the proposed housing complex project to be constructed on the Town of Westport owned property on what is known as the Baron's South; the Westport Fire Department from an operational standpoint is prepared to respond to emergencies that would occur in the future development. The development as I understand it would consist of a multi-story elderly housing/assisted living complex.

This construction project would fall under the jurisdiction of Fire Marshal Edward Zygmant who with his support team is ready to assist in facilitating both the planning, and permitting process. In a cursory discussion with Fire Marshal Zygmant, as you would suspect there is a number of life safety construction and compliance issues that must be addressed, along with the fire departments interest regarding road and driveway access in and around the proposed site.

In closing we do not have major concern about this proposed project as long as the code compliance issues relevant to the fire marshal division are satisfied.

Young, Mary

From: Perillie, Michelle
Sent: Tuesday, February 22, 2011 8:31 AM
To: Young, Mary; Bradley, Laurence
Subject: FW: Asset Test

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FEB 22 2011
WESTPORT P. & Z. C.

Michelle Perillie

Planning and Zoning
110 Myrtle Avenue
Westport, CT 06880
PH: 203 341-1076
FAX: 203 454-6145

-----Original Message-----

From: Santoro, Michael C [mailto:Michael.Santoro@ct.gov]
Sent: Tuesday, February 22, 2011 8:15 AM
To: Perillie, Michelle; Fazzalano, Geraldine
Subject: RE: Asset Test

Michelle:

Interest earned off an asset is considered income, but not the asset itself. We generally recommend that you use the HUD model for income determination when dealing with assets, which is available in the attached publication.

If you have any other questions, or require additional assistance, please do not hesitate to let myself or Jeri know.

Michael C. Santoro
CD Specialist
Housing – Office Of Policy & Strategy
Dept of Economic and Community Development

From: Perillie, Michelle [mailto:mperillie@westportct.gov]
Sent: Friday, February 18, 2011 10:36 AM
To: Fazzalano, Geraldine; Santoro, Michael C
Subject: Asset Test

Hello,

The question has arisen in Westport as to whether assets, as well as income, need to be considered when reviewing whether applicants are eligible for affordable units as designed in CGS §8-30g. Can you help us to answer this question?

Thanks,

Michelle Perillie

Planning and Zoning
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2/22/2011

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FEB 22 2011

WESTPORT P. & Z. C.

FACT SHEET

For HUD ASSISTED RESIDENTS

Below Market Interest Rate (BMIR)

“HOW YOUR RENT IS DETERMINED”

Office of Housing

** June 2007**

This Fact Sheet is a general guide to inform the Owner/Management Agents (OA) and HUD-assisted residents of the responsibilities and rights regarding income disclosure and verification.

Why Determining Income and Rent Correctly is Important

Department of Housing and Urban Development studies show that many resident families pay incorrect rent. The main causes of this problem are:

- Under-reporting of income by resident families, and
- OAs not granting exclusions and deductions to which resident families are entitled.

OAs and residents all have a responsibility in ensuring that the correct rent is paid.

OAs' Responsibilities:

- Obtain accurate income information
- Verify resident income
- Ensure residents receive the exclusions to which they are entitled
- Accurately calculate Tenant Rent
- Provide tenants a copy of lease agreement and income and rent determinations
- Recalculate rent when changes in family composition are reported
- Recalculate rent when resident income decreases
- Recalculate rent when resident income increases by \$200 or more per month
- Provide information on OA policies upon request
- Notify residents of any changes in requirements or practices for reporting income or determining rent

Residents' Responsibilities:

- Provide accurate family composition information
- Report all income
- Keep copies of papers, forms, and receipts which document income and expenses
- Report changes in family composition and income occurring between annual recertifications
- Sign consent forms for income verification
- Follow lease requirements and house rules

Income Determinations

A family's anticipated gross income determines not only eligibility, but also determines the rent a family will pay. The anticipated income, subject to exclusions the family will receive during the next twelve (12) months, is used to determine the family's rent.

What is Annual Income?

Gross Income – Income Exclusions = Annual Income

Determining Tenant Rent

Below Market Interest Rate (BMIR) Rent Formula:

- At move-in or initial occupancy, the family pays the contract rent
- At recertification, they continue to pay the same rent unless their **income is equal to or higher than 110% of the BMIR income limit**. If the income has risen to 110% of the BMIR income limit, they pay the **higher** of the BMIR Market Rent or the amount they now pay.

Income and Assets

HUD assisted residents are required to report **all** income from all sources to the Owner or Agent (OA).

Exclusions to income are part of the tenant rent process.

When determining the amount of income from assets to be included in annual income, the actual income derived from the assets is included except when the cash value of all of the assets is in excess of \$5,000, then the amount included in annual income is the higher of 2% of the total assets or the actual income derived from the assets.

Annual Income Includes:

- Full amount (before payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services
- Net income from the operation of a business or profession
- Interest, dividends and other net income of any kind from real or personal property (See Assets Include/Assets Do Not Include below)
- Full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount **** (except for deferred periodic payments of supplemental security income and social security benefits, see Exclusions from Annual Income, below)****
- Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay **** (except for lump-sum additions to family assets, see Exclusions from Annual Income, below)****

- Welfare assistance
- Periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts received from organizations or from persons not residing in the dwelling
- All regular pay, special pay and allowances of a member of the Armed Forces (except for special pay for exposure to hostile fire)
- ****For Section 8 programs only, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, shall be considered income to that individual, except that financial assistance is not considered annual income for persons over the age of 23 with dependent children or if a student is living with his or her parents who are receiving section 8 assistance. For the purpose of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income****

Assets Include:

- Stocks, bonds, Treasury bills, certificates of deposit, money market accounts
- Individual retirement and Keogh accounts
- Retirement and pension funds
- Cash held in savings and checking accounts, safe deposit boxes, homes, etc.
- Cash value of whole life insurance policies available to the individual before death
- Equity in rental property and other capital investments
- Personal property held as an investment
- Lump sum receipts or one-time receipts
- Mortgage or deed of trust held by an applicant
- Assets disposed of for less than fair market value.

Assets Do Not Include:

- Necessary personal property (clothing, furniture, cars, wedding ring, vehicles specially equipped for persons with disabilities)
- Interests in Indian trust land
- Term life insurance policies
- Equity in the cooperative unit in which the family lives
- Assets that are part of an active business
- Assets that are not effectively owned by the applicant or are held in an individual's name but:

- The assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and
- that the other person is responsible for income taxes incurred on income generated by the assets
- Assets that are not accessible to the applicant and provide no income to the applicant (Example: A battered spouse owns a house with her husband. Due to the domestic situation, she receives no income from the asset and cannot convert the asset to cash.)
- Assets disposed of for less than fair market value as a result of:
 - Foreclosure
 - Bankruptcy
 - Divorce or separation agreement if the applicant or resident receives important consideration not necessarily in dollars.

Exclusions from Annual Income:

- Income from the employment of children (including foster children) under the age of 18
- Payment received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone)
- Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member
- Income of a live-in aide
- **Subject to the inclusion of income for the Section 8 program for students who are enrolled in an institution of higher education under Annual Income Includes, above,** the full amount of student financial assistance either paid directly to the student or to the educational institution
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire
- Amounts received under training programs funded by HUD
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and

- benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS)
- Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program
- Resident service stipend (not to exceed \$200 per month)
- Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs and training of a family member as resident management staff
- Temporary, non-recurring or sporadic income (including gifts)
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era
- Earnings in excess of \$480 for each full time student 18 years old or older (excluding head of household, co-head or spouse)
- Adoption assistance payments in excess of \$480 per adopted child
- Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts
- Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit
- Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home

Federally Mandated Exclusions:

- Value of the allotment provided to an eligible household under the Food Stamp Act of 1977
- Payments to Volunteers under the Domestic Volunteer Services Act of 1973
- Payments received under the Alaska Native Claims Settlement Act
- Income derived from certain submarginal land of the US that is held in trust for certain Indian Tribes

- Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program
- Payments received under programs funded in whole or in part under the Job Training Partnership Act
- Income derived from the disposition of funds to the Grand River Band of Ottawa Indians
- The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the US. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands
- Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs
- Payments received from programs funded under Title V of the Older Americans Act of 1985
- Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent-product liability litigation*
- Payments received under the Maine Indian Claims Settlement Act of 1980
- The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990
- Earned income tax credit (EITC) refund payments on or after January 1, 1991
- Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation
- Allowance, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990
- Any allowance paid under the provisions of 38U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran
- Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act

- Allowances, earnings and payments to individuals participating under the Workforce Investment Act of 1998.

Reference Materials

Regulations:

- General HUD Program Requirements; 24CFR Part 5

Handbook:

- 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs

Notices:

- "Federally Mandated Exclusions" Notice 66 FR 4669, April 20, 2001

For More Information:

Find out more about HUD's programs on HUD's Internet homepage at <http://www.hud.gov>



WESTPORT CONNECTICUT

OFFICE OF THE
TOWN ATTORNEY

RECEIVED

MAR - 3 2011

WESTPORT P. & Z. C.

To: Planning & Zoning Commission

From: Ira Bloom, Town Attorney *I.B.*
Gail Kelly, Assistant Town Attorney *G.K.*

Date: March 3, 2011

Re: Text Amendment #625/ Appl.# 11-001

PRELIMINARY SUMMARY:

Our office has been asked the questions below as a result of a discussion during the Planning and Zoning Commission's public hearing on whether preferences for Westport residents could be implemented in connection with the development of affordable senior housing which includes a skilled nursing facility. The answer is "yes". Preferences are permitted under the law but they must be implemented in a way that does not violate the law against discrimination, whether that law is the Fair Housing Act, the tenant selection rules of a particular state or federal funding source, the state laws prohibiting discrimination against a person based upon such person's ability to pay, or any other applicable state or federal law or regulation governing admissions procedures for continuing care facilities of this nature.

Text amendment # 625 addresses, among other things, the development of a Senior Residential Community which may include Independent Living Facilities, Assisted Living Facilities and Full Care Living Facilities (as those terms are defined). Two of the components are residential and the third is a skilled nursing facility which may or may not be considered a residence in all cases because of the short term healthcare services. The questions and responses

are separated accordingly.

As part of our research we reviewed the Fair Housing Act (“FHA”), the laws governing Health Care Institutions under Chapter 368v of the Connecticut General Statutes; Regulations of Connecticut State Agencies applicable to nursing homes, in particular Section 17-311-209 (governing admissions to nursing homes which receive payments from the state); and relevant sections of the Department of Housing and Urban Development (“HUD”) Occupancy Handbook. We also consulted with a number of attorneys with expertise in this area as well as administrators of comparable facilities. It is clear that facilities with a skilled nursing component are highly regulated by a variety of laws, including, but certainly not limited to, the FHA. But it is also clear that preferences are allowed as long as they are imposed in a manner consistent with the laws.

We found that comparable facilities which comply with these laws do primarily attract and serve members of their own community. As our governing bodies look at these issues, they should be reassured that both the law and practical realities of how these critical life choices are made will permit these facilities to primarily serve the Westport community.

QUESTIONS:

a) May the Independent Living and Assisted Living facilities have a preference for Town residents?

The answer, to repeat, is “yes.” However, the administration of the preference must be consistent with the Constitution and civil rights laws. Title VIII and Title IX of the Civil Rights Act of 1968, commonly called the Fair Housing Act, governs. The Act applies to discrimination based on race, color, religion, sex, handicap, familial status, or national origin. The FHA prohibits discrimination in various transactions having to do with dwellings. The term

“dwelling” includes any building occupied or intended to be occupied as a residence. This is not a new law and, in fact, it is one which the town has dealt with before.

The specifics of the administration of a residency preference will vary depending upon what, if any, state or federal funding sources are used to build the housing. Those specifics cannot be determined at this time. However, as an example, for developments that obtain funding from HUD, owners must receive HUD approval in order to impose a residency preference, and HUD will approve of the preference only if it does not result in discrimination. The Connecticut Department of Economic and Community Development requires recipients of state financial assistance to create an affirmative fair housing marketing plan. In this case, applicants are required to identify the group(s) "least likely to apply" for the housing through the submission of relevant demographic data and to reach out to those groups through marketing in media targeted to that population—audience-specific newspapers, television, radio stations, community contacts.

b) May the “Full Care Living Facility” (a.k.a. skilled nursing facility) have a preference for Westport residents?

The answer is also “yes”. Section 17-311-209 of the Connecticut State Regulations sets forth several exceptions to the rule that applicants to a nursing home must be admitted in the order in which their names appear on a waiting list. Two of the exceptions relate to residency preferences. Section 17-311-209 (15) states that a facility may admit applicants other than in the order in which they appear on the waiting list if “ [A] municipality owned and operated facility with residency requirement with resident applicants admitted in the order in which their names appear on the waiting list”. Section 17-311-209 (19) states that an applicant may be admitted out of order if “(19) The facility is owned or operated by a non-stock, non profit corporation exempt

from taxation for federal income tax purposes which (1) provides now and provided in its original charter or certificate of incorporation that it is established for the benefit of the municipality in which it is located, and (2) receives financial assistance through grants or donations from the municipality in which it is located and/or the residents thereof, provided that all applicants who are residents of such municipality are admitted in the order of application without regard to their source of payment...”

To conclude, after speaking with several representatives from agencies which provide skilled nursing facilities for seniors (one of the components of the proposed text amendment) and which comply with the laws and regulations applicable to their agency insofar as admissions and preferences is concerned, the overwhelming response was that the reality of how people make the decision of where to live and where to get healthcare results in an overwhelming percentage of local residents living in or taking advantage of the healthcare services of a local facility. Comparable facilities which comply with the laws do attract and serve members of their community.

cc. Gordon F. Joseloff, First Selectman
Shelly Kassen, Selectwoman
Larry Bradley, Director, Planning and Zoning Department
Mary Young, Deputy Director, Planning and Zoning Department
Richard W. Redniss, Redniss and Mead



WESTPORT CONNECTICUT
THE DEPARTMENT OF HUMAN SERVICES
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Superseded
- See Version
STAMP DATED
3/9/11

TO: Mary Young, Deputy Director
Planning & Zoning Dept.
FROM: Barbara Butler *BB*
Human Services Director
DATE: March 3, 2011
RE: Text Amendment #625

4. *What is the current composite of local residents residing in local developments that have below-market rate dwelling units and are operated by the Westport Housing Authority or other non-profit agencies who receive federal funds? How do these agencies administer openings including any local preferences?*

Westport Housing Authority
Carol Martin, Exec. Director

When I spoke with Carol Martin prior to the 8-24 Public Hearing I was told that the Canal Park waiting list at that time was over 100 names. However she said that this is somewhat misleading since the list has been closed more than open in the last five years. So, in her opinion, had the Canal Park list been kept open that number would have easily doubled. WHA staff reviewed the list of current Canal Park residents and 40 out of 50 units have a person with ties to Westport (i.e. worked and/or lived in Westport). So 80% of the occupancy at Canal Park has "local" associations with the Westport community.

The Hales Court and Sasco Creek waiting list is well over 200 names with no marketing efforts. Some percentage of those 200 names are senior households.

The aging local population in Westport has no affordable options for rental housing in Westport other than what the WHA is providing. And the Canal Park units are not barrier free, so half of the units on the second floor with a full set of stairs, hardly a suitable option for an "aging in place" model.

Mutual Housing Association of SW CT
Larry Kluetsch, Exec. Director

According to Larry Kluetsch for the 10 units at their Fairfield development, Greenfield Commons, they received 121 applications and he thought that more than 75% of these applicants were currently living in Fairfield or had ties to Fairfield (used to live or work or had children in Fairfield). At initial occupancy, 8 of the 10 seniors were Fairfield residents.

Before Larry came to Mutual Housing he worked with two market-rate senior housing developers in Connecticut and Minnesota. The last site he was trying to acquire in CT was the Baron's South site. His analysis at that time was that a market rate project would pull 70-80% of its applicants from Westport and the contiguous towns (Norwalk, Wilton, Weston, and Fairfield). He said further that he hasn't found this to be much different for affordable developments. Seniors want to stay near communities where they have connections, even if it means paying higher housing costs.

Greenwich Housing Authority

McKinney Terrace, in the former Byram School building, has provided affordable senior housing for almost a quarter century. This housing has always met a neighborhood need. Half of the current residents come from the immediate area in western Greenwich and all but two of the others come from other parts of Greenwich. Only two of the 55 residents currently living in the 51 senior apartments at McKinney Terrace were not previously Greenwich residents. One was employed in Greenwich but lived in Port Chester and the other was a victim of Hurricane Katrina.

Like residents of all the Housing Authority developments, McKinney Terrace residents lived in Greenwich, or else worked here, prior to moving into the housing. Those who live in the Housing Authority's senior developments are typically long time Greenwich residents. Many are town natives. The Housing Authority, faced with long waiting lists for both its senior and family housing, has developed a plan to build additional senior units at McKinney Terrace.

I am waiting to hear from Ross Burkhardt of New Neighborhoods and Betsy Reid of New Samaritan (developed The Saugatuck). I also spoke to someone in New Canaan about the Schoolhouse Apartments, 40 units of low income senior housing. While they did not have an exact number to give me they said what everyone I've spoken to has said, and that is that approximately 80% occupancy by local residents seems to be the reality. And in most cases local is defined as current residents or relatives of current residents or lived and/or worked in the community.

The simple answer to the second part of the question, regarding how other agencies administer openings, is in accordance with the law and requirements of funding sources. I think the Town Attorney's memo answers that question more appropriately than I could.