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RESPOND TO: Westport

MEMO

To: Members, Planning and Zoning Commission

From: Ira W. Bloom, Town Attorney
Gail Kelly, Assistant Town Attorney

sub

Date: April 13, 2011

Re: Baron's South Senior Residential Community Proposal: request to include an "asset test"

We have been asked to render our opinion regarding the addition of an asset test requirement in the proposed regulation. The Commission may recall that we offered our opinions on this new provision during the public hearing. We advised in general that it would be inappropriate to include a detailed asset test in the proposed regulation. This memorandum will amplify our comments, but will also offer a suggested addition to the regulation to address the concerns of the Commission.

We understand that you have been reviewing a "fact sheet" prepared by HUD, which summarizes general HUD program requirements, 24CFR Part 5, as well as the Handbook: 4350.3, *Occupancy Requirements of Subsidized Multi-family Housing Programs*. This abbreviated "fact sheet," part of the record of this proceeding, contains a paragraph regarding income and income derived from assets.

As the Commission knows, the authority to adopt regulations is spelled out in Conn. Gen Stat. §8-2. This detailed statute outlines the items a zoning commission is authorized to regulate. In adding any language regarding income or assets to the proposed regulation, the Commission should be sure that such language is authorized pursuant to this statute. A lengthy or detailed delineation in this regulation of an “asset test” would not be authorized pursuant to §8-2, nor would a provision which leaves the terms of such an asset test to the Commission’s discretion.

Further, in reviewing this issue, the Commission should keep in mind that there are many complicated regulations which govern these areas. The Commission has not had an opportunity to fully review all of the various regulations which are associated with the funding sources for this type of housing. We would advise caution in choosing one particular paragraph or clause from the HUD fact sheet, given that there is substantial law in this area which has not been reviewed.

While it is understood that the Commission has raised an important issue to be addressed, you should be reassured that there will be future forums in which to discuss income and asset standards. For instance, at a later point in time, a lease will be presented to you for a §8-24 review. The lessee at that time can be questioned regarding income and asset standards. Further along in the process, there will be an application for a special permit and site plan application, which will provide other opportunities to explore these issues.

Nevertheless, while the Commission should keep the above considerations in mind, we also recognize that they are raising a legitimate concern. Accordingly, we would propose that the following general language would be acceptable, and may be inserted into the proposed regulation in paragraph 32-15A.6.3, Affordability Plan, which governs the affordable units:

The amount of income derived from assets shall be guided by applicable state and federal regulations.