

**DERBY BOARD OF ALDERMEN SPECIAL MEETING**

**DERBY CITY HALL – JANUARY 14, 2009 - 7:00 P.M.**

**MINUTES**

The Honorable Mayor Anthony Staffieri called the Special Meeting to order at 7:00 p.m. All rose and pledged allegiance to the flag.

**Roll Call**

Present: Anthony Szewczyk, James Allaire, Beverly Moran, David M. Lenart, Scott M. Boulton, Kenneth Hughes

Absent: Ronald Sill, James Benanto, Jr., Joseph Bomba

Also Present: The Honorable Mayor Anthony Staffieri  
Sheila O'Malley, Executive Director, Economic Development  
Joseph T. Coppola, Corporation Counsel

**PUBLIC PORTION**

Mayor Staffieri asked three times if there was anyone from the public wishing to speak. Hearing none...

**PUBLIC PORTION CLOSED**

**PRESENTATION BY DOUGLAS GILLETTE, ESQ. – CITY AND TOWN DEVELOPMENT ACT**

Atty. Gillette thanked the board members for having him here this evening and explained that he is with the firm of Day Pitney and they serve as the City's Bond Counsel. He said he is here this evening to discuss and answer any questions concerning the City and Town Development Act.

Atty. Gillette explained that the City and Town Development Act is a tool, which provides Cities that adopt its provisions powers that generally are not available with respect to the support of projects, which are intended to ameliorate conditions in the City intended to add to housing stock, intended to provide additional employment opportunities and it needs to be viewed that way. He said that in using the Act it is really a two-step process – the first part is invoking the powers of the Act, which is a process by which a Public Hearing is held on a resolution in which certain findings are made by the Board of Aldermen, which allow the City to exercise the powers under the Act and then that resolution is sent to referendum. Atty. Gillette said he thinks that is the part of the process that is currently being discussed. He said that is merely the creation of a tool – it is not associated with a project, it doesn't authorize any financing, it doesn't include any agreements with particular developers. All it is doing is enabling the City to use the tools under the Act. If following adoption – that resolution by the Board of Aldermen and approval by referendum – a project comes forward that the City would consider as fulfilling the purposes of the Act, which are projects that will expand employment opportunities, increase housing opportunities including housing projects, commercial/industrial parking, recreational facilities at large – the types of projects that can be assisted under the Act. Each individual project would be subject

to a separate approval process. Atty. Gillette stated that part of the way that the Act is set up is once you invoke its powers the powers are good for a period of five years. Atty. Gillette then discussed financing of particular projects. He noted that this does not fall under typical capital project financing. This financing would be Special Obligation Finances, which are finances that are backed solely by the revenues of whatever particular project is being approved. He noted that these bonds would not be counted against our debt limitation. As part of the process of issuing bonds the City would have a public hearing specific to any individual project and the financing would be approved by the Board of Aldermen. Atty. Gillette informed the board members that they type of financing and how it is structured is different than it would be for capital projects. With revenue financing there will be a trust indenture with a corporate trustee, there would be a loan agreement between the project developer and the City that controlled how the money was expended and obligated the developer to repay the bonds. He said that each project is negotiated and the City ultimately has control over how the projects are structured. Atty. Gillette noted that it is important to understand that between the loan agreement, and the trust indenture and the related documents the City really does retain control of how the project is put forth. He stated that these are revenue financing – they aren't financing that have any call on the City's tax revenue. He said if worse comes to worse and the project runs into trouble and there are no revenues to pay the bonds there is no secondary call on the City's resources – it is limited to the project revenues.

#### **QUESTION AND ANSWERS REGARDING THIS PROCESS REQUIRED UNDER THE ACT FROM THE BOARD OF ALDERMEN**

Mr. Szewczyk asked if a developer wanted to come in and put up a shopping center what would be the difference between the way that it is done now and doing it with this Act.

Atty. Gillette responded that the way that it is done now the City really doesn't have the authority to issue bonds and loan the proceeds to a commercial developer.

Mr. Szewczyk asked what would happen if the City wanted to loan bonds to a commercial developer.

Atty. Gillette said if there is a project that will generate employment in the City, which will generate Grand List growth, which will address housing issues then the concerns that are underlying the City and Town Development Act it may make sense to provide assistance. He said since it is revenue financing the City would not be pledging any City resources – the City would really be acting as a conduit. He said the advantage to the developer and it may be a sufficient advantage to either make the project go forward or not go forward, and with one type of developer, which is a non-profit, the bonds can be issued as what is known as "Full Qualified 501 C 3 Bonds," which are tax exempt so that the non-profit developer gets the benefit of the lower interest rate. He said the other advantage is sometimes municipalities can structure financing in a way that a commercial lender would not make available. Under the Act, depending on the type of project, you can do 30 and 40 year financing.

Mr. Szewczyk asked if every City in the State could go under this Act.

Atty. Gillette noted that there are findings that have to be made – in effect findings of need to exercise the powers under the Act and some municipalities may have difficulty

in making the necessary factual findings to qualify to use the powers under the Act. He said again that is the first part of the process, which he discussed earlier this evening. You must adopt the resolution enabling the City to use the Act. Again there is a series of findings that the City has to make, which support the public purpose underlying the Act.

Mr. Hughes asked if this was just a way for developers to use the Bond Rate of the City to borrow money on more favorable terms.

Atty. Gillette said it's not really using the bond rating because the City isn't pledging its credit. It still is a pledge of the projects revenues. He said for certain issuers who are non-profits in particular it allows the City to pass through the tax-exempt financing rate, which is lower than a taxable commercial rate.

Mr. Hughes asked what the liability to the City is. What's the downside - what should we be looking at?

Atty. Gillette said fiscally related to the financing there really isn't a liability because the City's credit is not behind the bond issue. It doesn't show up in the City's debt limit; it doesn't show up in your ratios. The downside realistically is not doing sufficient due diligence. Not properly structuring the various covenants and representations in the trust indenture and loan document such that you ensure yourself that you have a viable project. The downside is not having the project complete. He said at that level you could have reputation concerns because the City's name is associated with the project even if the City's credit is not. Obviously you would also have the problems associated with any major project that is undertaken in the City that isn't completed. Atty. Gillette said those are the real risks and it's important that the due diligence is done up front and that the City engage whatever professionals are needed to make sure that the various covenants and representations and the financing are structured to ensure that the project goes forward.

Mr. Hughes said then the risks aren't really involved with the passage of the Act - it's really the implication of the Act once it is passed.

Atty. Gillette said that is correct. The passage of the Act does nothing more than give you the tools. Then the Board of Aldermen will have the ability to determine over the next five years what if any projects go forward.

Mr. Hughes asked if it is purely at the discretion of the Board of Aldermen as to what projects use the Act.

Atty. Gillette said the Board of Aldermen authorizes the bond financings.

Mr. Hughes asked if there is any special set of criteria or could it be just a matter of we don't want you building in Derby.

Atty. Gillette said you have to make findings that the project will further the purposes of the Act. He said there is a list of the type of projects and it is fairly broad.

Mr. Hughes asked about in terms of denying a project.

Atty. Gillette said it is purely in the Board's discretion.

Mr. Hughes said then there is not a certain set of criteria.

Atty. Gillette said it is purely discretionary. He said by taking the steps that have been discussed of adopting the resolution and sending it to the voters for approval the City is giving itself a tool and its up to the City whether or not to use the tool.

The question was raised if the City decided to go forward when the referendum would take place.

Atty. Gillette said before the Board Acts on the resolution there must first be a public hearing, which basically needs a one to two week notice. Following adoption by the Board of the resolution it then goes to the voters at a vote that has to be held not earlier than thirty and not less than sixty days after the Board Acts on the resolution. So it would probably be several months from the beginning to the end of the process of approving the tool.

Mayor Staffieri informed Atty. Gillette that about a year ago with the downtown project the developer was constantly trying to find a lower interest financing. He explained that he went from the federal government to state government, etc... looking for ways for his project to make monetary sense. Mayor Staffieri noted that this tool would be able to be used to help a project along. Atty. Gillette said that is correct. This type of financing, conduit financing, can be useful both for entities that are tax-exempt and those that are taxable.

Mr. Hughes questioned the five year period regarding the Act. Atty. Gillette said there is a five year period after the referendum date in which the City could commit to projects and issue debt. At the end of that period if the City decided to continue to use the powers under the Act the City would have to go through the process of reinstating it. He said if there is a project that is underway you continue to be able to exercise powers with respect to that project.

Mr. Szewczyk asked what would happen if the City didn't extend this offer to one developer and a similar project comes along and the City decides to extend the offer to that particular developer - what are the ramifications.

Atty. Gillette said anybody can sue; however he doesn't believe that it would be a viable Action if simply it was determined that the project was not going to be contemplated. He stated that there are so many differentiators between projects and it does not create any sort of entitlement.

Mr. Szewczyk asked if this creates any additional liabilities to the City if a project doesn't get approved by the Aldermen. Atty. Gillette said he doesn't think realistically that it would.

Mr. Szewczyk asked if there is any other town in Connecticut that has used this Act and has actually been applied to a project. Atty. Gillette stated that the City of Bridgeport has used it - he believes for the 30/30 Park Project. Mr. Szewczyk then asked Atty. Gillette if he knows of any other State using the Act. Atty. Gillette said he is not aware of any other State practice; however the use of conduit financing, which is what this is

called, is very common. It is a very typical type of financing used by CDA, CHFA, etc... although it hasn't been used a lot in Connecticut at the local level.

Atty. Coppola said you have to distinguish between the powers under the Act and the project coming under the Act. What we're doing this evening is deciding whether or not the Board of Aldermen is interested in passing the Act. He said he doesn't hear any pitfalls of having a public hearing and going to a referendum and allowing the public to vote on whether or not we should have the powers under the Act. Atty. Coppola said that once we have the powers then you can decide per project how deep you want to get into it or not get into it.

Mr. Szewczyk asked if there was any literature available that could explain the City and Town Development Act in layman's terms. Atty. Gillette said he can generate something that could be made available to the public. He noted that there is a provision in the election laws that allow the Aldermen to authorize a short explanatory text to distribute noting that it cannot be an advocacy piece – just an explanatory piece.

Ms. O'Malley said she believes the first issue that the Board needs to consider is whether or not a particular project is going to be a good project – is it going to benefit the City – and what incentives are available to help that project move along if it needs it. She noted that she frequently has developers come in and ask what incentives are available from the City of Derby noting that we already have the Enterprise Corridor Zone, tax abatements, Special Tax District, etc... we would now be able to list this as an additional incentive.

There were no further questions asked of Atty. Gillette. Atty. Gillette said that he would work with Corporation Counsel to put together an explanation of the City and Town Development Act for distribution to the public. He also encouraged the Board members to contact him should they have any questions.

#### **ADJOURNMENT**

**A MOTION** was made by Mr. Hughes with a second by Mrs. Moran to adjourn the special meeting at 7:50 p.m. **Motion carried.**

Respectfully submitted,

Patricia Finn  
Recording Secretary

**THESE MINUTES ARE SUBJECT TO THE APPROVAL OF THE BOARD OF ALDERMEN AT THEIR NEXT REGULARLY SCHEDULED MEETING.**