DERBY BOARD OF ALDERMEN PUBLC HEARING

DERBY CITY HALL – FEBRUARY 19, 2009 – 7:00 P.M.

MINUTES

The Honorable Mayor Anthony Staffieri called the public hearing to order at 7:04 p.m. All rose and pledged allegiance to the flag.

Roll Call

Present: Kenneth Huges, James Allaire, James Benanto, Joseph Bomba, Anthony Szewczyk and Beverly Moran.

Absent: David Lenart, Ronald Sill and Scott Boulton.

Also Present: Doug Gillette – Bond Counsel – Day Pitney & Howard LLP, Henry Domurad – Finance Director, Attorney Joseph Coppola – Corporation Counsel, Sheila O'Malley – Director of Economic Development, Keith McLiverty – City Treasurer, Philip Robertson – Chief Administrative Officer, and Carolyn Duhaime – Board of Apportionment and Taxation Chair.

Public Portion
Carl Yacobacci – Mr. Yaccobacci wanted to know if the public would be able to have discussion after the presentation. Mayor Staffieri said yes.

PUBLIC PORTION CLOSED.

TOWN DEVELOPMENT ACT
Mr. Gillette explained the Act. The Connecticut City/Town Development Act provides Connecticut municipalities that take the action as necessary to invoke the act, to exercise special powers which are beyond those that can be exercised under the general powers of municipalities. It enables municipalities to use those powers by adoption through the legislative body for resolution.

The body can make various findings and determinations regarding the existence of the conditions described in the act. The powers in the act can be effective in remedying those conditions.

The adoption of the act has to take place after the public hearing. Once the aldermen have considered and decide to act upon the resolution that resolution will go the voters for approval at referendum. It is important to note, by adopting the powers under the act no particular project is being approved or authorization of bonds are being approved.

What is being considered with the resolution at this public hearing is simply enabling the City to take further steps if it deems it appropriate to use the powers of the act.

The purpose of the act is to eliminate the deterioration in municipalities by preserving and expanding employment opportunities and expanding the tax base by undertaking or assisting in the financing of housing, industrial, commercial, parking, retail, office, hotel,

warehouse, recreational or transportation facilities and facilities that support those types of facilities.

One of the most significant tools that are permitted to municipalities that have adopted the act's powers is the ability to issue bonds and notes to provide funds for achieving purposes of the act. The uses of those proceeds would be to make mortgage loans to project sponsors and to acquire development property and sell it.

The authorization of a particular project requires further action by resolution of the Board of Aldermen following a public hearing on that particular project.

Bonds and notes that are issued under the act are not like the bonds and notes the City issues for its capital projects which are supported by a pledge called a full faith and credit of a municipality(General Obligation Bonds) The bonds issued under the act are special obligations. They are paid for solely from the revenue pledged to support those bonds. Typical types of revenue pledged would be proceeds of loan repayments, mortgaged property that is part of the development being considered. They are all project revenues. Generally, there is no draw on general municipal revenue to support these bonds.

There is one provision that permits a municipality issuing bonds under the act to create a capital reserve fund to support the bonds. If such a fund is created, the City can pledge to fill up this reserve fund. It is not necessary to have that pledge to have a reserve fund and it is not necessary to have a reserve fund to issue the bonds. That is the only situation where general City revenues would be in any way supporting a bond issue, under the act.

The special obligation bonds are not subject to the City's statutory debt limit. They aren't included in aggregate indebtedness for purposes of statutory debt limit.

Mr. Hughes wanted to know what happens if a project fails. Mr. Gillette stated special obligation bonds are issued with a trust indenture with a corporate trustee who has control over project revenues. If a project fails the trustee would exercise its powers under the trust indenture to take the property and revenues that are supporting the bonds issue and send bond letters. If there is a default, bond holders are not (inaudible) and in typical financing if you do not have that special pledge to come up with a reserve fund by a municipality, the bond holders have been at risk that the project would not generate sufficient revenues and they have no recourse. Mayor Staffieri said if a project fails or the developer fails, the City is not held responsible in any way. Mr. Gillette said yes, there is no legal responsibility on a special obligation bond for the City to step in and use its general revenues to pay bond holders. The bond holders are limited to the property revenues that are pledged.

Mr. Hughes asked what the down side is for a municipality. Mr. Gillette said the down side is project specific. The City needs to do its due diligence and make sure any project is a good project and has a sufficient feasibility study. That is really the only down side, that is for the City to do its due diligence and getting the appropriate consultants and financial experts to assist. Mr. Hughes said the true trigger for this act for a developer to qualify would be the approvals from the City. Mr. Gillette said yes. Simply because the City adopts the act and can exercise these powers does not give a developer with a project the right to force you to use these powers. It is still an exercise of the City's discretion to determine whether a project is appropriate.

Mr. Yacobacci asked Mr. Gillette to describe the special powers the town has in obtaining property and what kinds of development property. Mr. Gillette said the main power is the ability of the City to buy/sell/mortgage property and make loans for the purposes described. Generally, municipalities can't get involved in commercial real estate transactions. There are several statutes under which there are powers granted (ie: redevelopment statutes, development statutes, manufacturer's assistance act) where certain projects based on certain findings municipalities can make loans to commercial projects and non profit projects. That is the main powers granted under this act, an ability to issue bonds, supported by those project revenues to finance the project.

Mr. Yacobacci asked where the City gets the money. Who is going to issue the bonds? Mr. Gillette said the bonds would be issued by the City as special obligation bonds. It is a negotiated transaction with an underwriter. The underwriter takes the bonds that it buys and resells them to retail customers, mutual funds and the like. It is a structured financing.

Mr. Yacobacci asked if there would have to be a project with estimated revenues for someone to buy the bonds. Mr. Gillette said yes.

Mr. Yacobacci asked if this is similar to a special tax district. Mr. Gillette said it is similar in that it is conduit borrowing, where a state or local agency, town or city issues debt and loans those proceeds to finance a project and the bonds are supported by the revenues from the project.

Mr. Gillette said the proceeds of the loan agreement where the money is loaned to the developer and as part of that, typically there will be a mortgage on the property, there will be a pledge of all the project revenues, a pledge of project grants. It is a financing that is backed by the revenues. Those pledged revenues and the pledged property are held by the corporate trustee under the trust indenture/bond indenture. The City still collects the taxes on the properties.

Mr. Hughes asked if the additional work that needs to be done (if the act passes and a project comes forth) on a project to prepare for using act is at a cost to the developer or the City. Mr. Gillette said it is a capitalized cost and the project revenues end up paying for it.

Mr. McLiverty wanted to be sure the conduit or vehicle utilized to obtain proceeds for bonds issued does not affect the taxpayers, the full faith credit of the City, debt ratios and debt limitations at all. Mr. Gillette said yes, these special obligation bonds are not considered in the City's aggregate indebtedness for purposes of a debt limit. They would not be included in debt ratios.

Carolyn Duhaime wanted to ensure that if a project fails there is no fiscal responsibility on the part of the City, unless it establishes a special capital reserve fund. Mr. Gillette said if there is a special capital reserve fund and the City agrees that it will maintain a certain level in that reserve, then the bond holders have the benefit of that pledge. The City doesn't necessarily have to have a capital reserve fund. If it becomes part of the analysis of what the underwriter's are looking for and how they think they can best market the bonds and if you do have that type of fund there is no requirement the municipality go a second step and pledge to keep it filled. Typically these reserve funds do have a level to be maintained at, but with project revenues.

Marc Garofalo – 95 Academy Hill Road. Mr. Garofalo wanted to know examples of project revenues. Mr. Gillette said it could be hospital fees, federal/state grants. Any project that is charging a fee, those are project revenues, industrial, manufacturing.

Mr. Garofalo asked how the bonds get paid off. Mr. Gillette said the bonds would be issued; the proceeds of the bonds would be placed in an account under the trust indenture and some of the proceeds can also go into a reserve fund. There are provisions in the trust indenture which direct when the trustee will disburse money to the developer in order to build the project. Once the project is generating revenues, those revenues flow to the trustee in an amount sufficient to cover debt service and then that debt service payment is made to the bond holders.

Mr. Garofalo wanted to know what types of projects would qualify for this act. Mr. Gillette said it is fairly broad. It is housing, industrial, commercial, parking, retail, office, hotel, warehouse, recreational facilities.

Mr. Garofalo said these are projects that could otherwise be financed privately or publicly. Why does the City want to finance a development project? Mr. Gillette said to build a tax base, to meet needs for housing, to meet needs for other facilities that are not available. There are a lot of projects where the ability to use municipal or state bonds makes them viable. The state financing puts a pre-requisite on that that typically goes with moderate income housing. Mr. Gillette said the City would need to have a public hearing to have a project meet the criteria in the act, addressing the issues.

Mr. Garofalo said the resolution is looking to give blanket authority to the City at referendum, not project specific. Mr. Gillette said it is authority to use powers under the act. You still have to use those powers consistent with the requirements. Mr. Garofalo said the resolution is to give blanket authority. Then the Board of Aldermen has the authority to approve or disapprove a specific project. Mr. Gillette said it is separate required by statute to separately take action to invoke the powers of the act and not combine into a single vote. There is a referendum to approve the act; there is no referendum to approve a project.

Mr. Garofalo asked how may towns/cities are using this act. Ms. O'Malley said there are three or four who have used it.

Mr. Garofalo wanted to know if Hamden or Bridgeport had blanket authority or were they given project specific authority. Mr. Gillette said he was not involved with either of those projects. The way the statute works is a two part process. One: invoke the act by referendum. Two: individual projects are approved by the elected legislative body at their discretion after a public hearing.

Mr. Garofalo asked what developers have been asked about using this act. Mayor Staffieri said with today's economy, developers need tools to get projects done. This provides a tool for a developer to get funding. This could be for any project: downtown, Foutain Lake or HALO. If it is beneficial to the City, where the City will lose no tax revenue on it, then it is a good tool.

Mr. Garofalo asked which developers have you discussed the possibility of using this act. Mayor Staffieri said hopefully he will discuss this with a multitude of developers. Hopefully, when bid packets are opened for the downtown project it will be discussed. Mr. Bomba said it is a tool to entice development in this City which has been neglected for years.

The Mayor said the City is trying to get tax money into the City by getting these barren spots that have been barren way too long and not been producing taxes for our City.

Anita Dugatto asked if the projects to be reviewed can be existing projects or new projects. Mr. Gillette said the statute doesn't define it as having to be new projects. The project must fall within the criteria of the act. She hopes the City is not just given away.

Mr. Hughes asked if this is a good or bad thing for the City. Mr. Gillette said as a practical matter it gives the City additional tools when approached by a developer if the use is appropriate. Mayor Staffieri said Derby has two other tools the Enterprise Corridor Zone and the Forty five million dollar special taxing district and the act is another tool.

Mr. Yacobacci asked if the bonds are free from state and federal taxes Mr. Gillette said it depends on the type of project that is being financed. The City is not limited to issuing tax exempt bonds.

Mr. Yacobacci asked for examples where this has been used for commercial and housing with success. Mr. Gillette said there are so few using the act at this time. They used it in Bridgeport. Ms. O'Malley said there are three or four towns that have gone this route.

Mr. Yacobacci asked if someone from the City would be overseeing the disbursements. Mr. Gillette said it is handled by a trustee.

Mr. Hughes asked if Mr. Gillette could see this act becoming more popular because of the economic conditions and as more and more towns realize it exists as a good tool . Mr. Gillette said it could be, you could do some things under the act that you couldn't do under the development and redevelopment statutes. The powers are more broad and flexible.

Mr. Garofalo asked how this act is different than the redevelopment statute. Mr. Gillette said the development statutes for a project under Title 8 provisions, the City would be required to acquire property. The City could finance its acquisition of property. It is not a requirement under the town development act.

Mr. Garofalo asked if this is for already developed land that is inadequate or is it restricted for redevelopment projects. Mr. Gillette said you could do a project that is currently undeveloped property.

Mr. Garofalo asked if it is a non profit project, would it be a PILOT to the City. Mr. Gillette said no, it would be from fees generated from the non profit. If it is a project that is owned and operated by a 501C3 organization and it is fulfilling its 501C3 non profit purpose then that could be financed on a tax exempt basis at a rate lower.

Mr. Waleski – 21 Elm Street. Mr. Waleski said the City has been neglected. The proposal has desirable features which also imposes enormous responsibilities with respect to Sections G, H and I of the legal notice. There are openings for developers to exercise their considerable influence and expertise in promoting projects. Developers have becoming large and powerful. Mr. Waleski asked who is to exercise the details of the projects. The City does not have expertise in all categories and areas. Will the projects be separate and small in nature and considerable in number or will it be one large continuous project? It is a noble effort but it imposes enormous responsibilities to

administrate. The City has enormous potential. He wishes the City well. Mayor Staffieri said the City has been trying to take a pro- active approach to be ahead of the curve instead of always behind the curve and not getting anything done like it has in the past.

Mr. Hughes wanted to know if Mr. Gillette would be involved in the paperwork and research required to allow a project to fall within the act. Mr. Gillette said he would be involved in bond documents, the trust indenture, loan agreements and all the bond documents. On any significant project the City would want to have some consultants involved with financial expertise and feasibility studies.

Cliff Parizo said he heard there is no downside to the City. He also heard the Mayor say it is an easier avenue for a developer to secure funds. Assuming the act is a viable vehicle for the past thirty years, yet only a handful of communities have used it. To him this says a win-win for the City, a win-win for the developer, but not a lot of experience. As an investor, he is saying maybe this is risky to him. Why would the board believe investors would put up funds in this economic condition? Mr. Gillette said the important factor is the special obligations do not pledge City revenues, just project revenues and that is what investors will look at. The bulk of the official statement which would sell the bonds is going to contain an exhaustive study as to why the project is viable, along with a long description of the mechanism between the loan agreements, the trust indentures and other documents about the transactions and how the funds will flow and be held by the corporate trustee so the bond holders are secure. There are investors out there who regularly buy this type of finance. Mr. Parizo said this is not a tool for a lot of small projects and thinks there will be public interest in what the large project is.

Mr. Waleski said it is note worthy and important to point out the resolution is for five years. That should be in there and he is glad to see it.

Mr. Garofalo said the statute said it could be up to five years, it could be less. He urges the board to consider that. The financing for a for profit developer, pretty much there is no benefit other than obtaining financing that probably no banks would pay. Mr. Gillette said no, it is not a credit issue it is a structure issue. You could do bonds with longer terms than typically with a commercial lender.

Mr. Garofalo said the real benefit is for the non profit developer. Mr. Gillette said the tax exemption is an important thing that can be offered up.

Mr. Garofalo wanted to know what the plan is. Will it be voted on tonight? Mayor Staffieri said there is no action tonight.

Mr. Yacobacci asked if the City could hire a consultant or experts to oversee those expenses. Mr. Gillette said the trust indenture sets up a mechanism so that anytime there is a draw from the developer, there is criteria to be met, with sign offs by the consultants.

Mr. Yacobacci wanted to know when this will go out for referendum and does it need a minimum of 15% of registered voters. Mr. Gillette said this does not require the minimum percentage of voters.

Mr. Hughes said he does not feel that because three or four towns have done this, does not bring a good argument. It is about time Derby takes a lead on this, Derby deserves this.

Mayor Staffieri said he went to a Mayor's conference talking about how to get developers into our cities. One of the discussions was this act. It is the work involved by the aldermen that they have to do to do our due diligence as to why in the past it hasn't been done. All the mayors, all the economic development directors will be seeing people looking into this.

Anita Dugatto – she has heard about the tools Derby has. She wants to know if a developer can tap into all of these tools. Ms. O'Malley said Connecticut offers very specific tools and incentives but with requirements. The thing to remember is no power is being taken away from the legislative body. You are adding to the City's tool box. Derby has an expert in bonding. This will increase the tax base, increase employment and develop areas that need development.

Ms. O'Malley submitted informational data for the record. The Connecticut Economic Resource Center provides data as of January 2009 on employment, housing, commercial retail, US Census Bureau statistics, statistics that H.U.D. uses to determine census tracks and whether or not Derby qualifies for certain programs, definitions of programs that Derby and the Naugatuck Valley qualify for.

Ms. O'Malley said part of the justification for the town act is to understand the criteria. Some of the criteria is that there has to be a need for development, a need to increase employment rate and a need to address some of the blighted areas. The data gives information about the unemployment rate in Derby as compared to the county and the state. The data also gives information with regards to the state term of a distressed municipality and how you get called distressed. She also has the plan of redevelopment.

Mr. Garofalo asked if the public portion can be left open as they have just received this information and the public has not had a chance to review it. Mayor Staffieri said the public portion won't be left open. Ms. O'Malley said this is data used by state agencies.

A MOTION was made by Mr. Hughes to close the public hearing, second by Mr. Bomba, all in favor. **Motion carried.**

A MOTION to adjourn by Mr. Hughes, second by Mr. Szewczyk, all in favor. **Motion carried.** Meeting adjourned at 8:34 p.m.

Respectfully submitted

Denise Cesaroni
Recording Secretary

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