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AD HOC COMMITTEE—DXR HOLDINGS-WALLINGFORD ROAD

DEED RESTRICTION

CAUCUS ROOM, 3RD FLOOR, CITY HALL

09-JULY-2013

Chairman Jack Knapp called the Committee meeting to order at 5:34pm.

COMMITTEE MEMBERS PRESENT: Chairman Jack Knapp, Joseph Cavo, and Paul Rotello.

COMMITTEE MEMBERS ABSENT: None

ALSO PRESENT: Laszlo Pinter, Deputy Corporation Counsel; Dennis Elpern, Director Planning and Zoning; Paul Estefan, Airport Administrator; Sean Hearty Zoning Enforcement Officer and Director of Permit Coordination; Bruce Tuomala, Director of Economic Development; and Petitioner, Chris Orifici.

After making introductions, Chairman Knapp reminded all that this meeting was a continuation and gave a summary of the previous meeting. The committee wanted opinions and advice from Planning & Zoning Director, Dennis Elpern and Sean Hearty, Zoning Enforcement Officer Director of Permit Coordination. Further, FAA guidelines needed to be clarified.

Chairman Knapp stated that he, Mr. Estefan and Mr. Orifici met with the FAA for clarification on the guidelines. Chairman Knapp stated that the FAA expected the City to act uniformly and with fairness for all operators. He did not believe that changing the deed restriction would harm the City's ability to get Grants. However, he continued, the FAA will not put anything in writing and will not make a decision until Danbury has changed the land records. Mr. Estefan stated that he would not recommend lifting the deed restriction because there is a chance it could hurt grant funding.

Chairman Knapp asked Mr. Elpern to review the options. Mr. Elpern stated that the zoning change could not be made for one parcel. He advised being very cautious given the current zoning challenges on Miry Brook Road.

Chairman Knapp asked Mr. Hearty if there were any options from his perspective. Mr. Hearty stated that a Fixed Based Operator (FBO) that is an Airport Terminal could sell food as an accessory if it was not greater than 25% of the total space. Further discussion ensued regarding this option including the type of food service, parking, other FBO's and their deed restrictions, and current surrounding businesses and homes.

Mr. Orifici addressed the committee stating that the 25% accessory rule would work for his business. He continued his business was definitely a terminal as it was how passengers got to and from planes and it would meet the FAA guideline for "through the fence" operation.

Further discussion regarding the other deed restrictions, the current zoning, and FAA guidelines took place. Mr. Cavo stated that he was concerned that the FAA would not give them a ruling or put anything in writing. In addition, there seemed to be unintended consequences of lifting this deed restriction. Mr. Pinter stated that it may be possible to amend the restriction with language that could prevent soft incursion on airport. However, he cautioned that FAA interpretation was subject to interpretation and personnel changes, and there is no guarantee that they will remain consistent.

Joseph Cavo made a motion which was seconded by Mr. Rotello to recommend to the City Council that the requested change of the deed restriction be denied.

Mr. Knapp stated that he would not support the motion as the restriction was from 1940 and growth at the Airport should be evaluated. Mr. Rotello stated that if the airport is going to move forward there needs to be food. However the hurdles for lifting this restriction are too great. He believes the City should evaluate the consequences of the current restrictions to minimize the impact of the residents near the airport. Mr. Cavo stated that lifting the restriction would have too many consequences.

Vote: In favor Cavo and Rotello, Against Knapp.
The motion passed 2:1.

There being no further business before the committee, Mr. Cavo moved to adjourn. Mr. Rotello seconded the motion. Vote, all in favor, motion unanimously approved. The meeting adjourned at 6:22pm.

Respectfully Submitted,

Jack Knapp, Committee Chairman

Joseph Cavo

Paul Rotello

**AD HOC REPORT
DXR Holding- Wallingford Road**

Honorable Mark D. Boughton, Mayor
Common Council Members

January 15, 2013

Chairman Knapp called the meeting to order at 6:15pm in the Caucus Room at City Hall. Committee members Joe Cavo and Paul Rotello were in attendance. Petitioners Tom Torti and Chris Orifici, and Attorney Robin Kahn representing the petitioners were also present. Paul Estefan, Airport Administrator; Bruce Tuomala, Director of Economic Development and Laszlo Pinter, Deputy Corporation Counsel and members of the public were also in attendance.

Following introductions, Chairman Knapp stated that the call of the meeting was to consider removing/modifying the deed restriction on the petitioners' property at the airport on Wallingford Road. Atty. Pinter was then called upon to give a brief description of the request. DXR Holding has petitioned to waive a restriction on a proposed restaurant on private property adjacent to the airport. They are asking the Council to remove the restriction placed on the property in 1948 and examine the basis to ease the restriction or to broaden the language to allow them to engage in the proposed business. The legal process would be to examine the sponsor assurance documents and the assurances from the FAA, look at the deed restriction, and check the title for any other filings and for Planning and Zoning to determine planning implications. The existing deed restriction would have to be modified legally with a separate document. Chairman Knapp noted that the Aviation Commission gave a positive report and the Planning Commission gave a negative Report.

Chairman Knapp called upon Paul Estefan, Airport Administrator, for his report and comments. Mr. Estefan stated that his biggest concern would be the City's ability to obtain future federal funding for the airport. Mr. Estefan advised that the FAA has not committed to a ruling. By way of email, the FAA advised that restaurants and catering are a not aviation related use and advised the City as to how the FAA thinks the City should proceed. Previously there was restaurant at the site, which was a non-conforming use. Mr. Estefan advised that there is a master plan of development approved by the State of CT, the FAA the City boards and commissions. He expressed his concerns about losing funding for capital projects ranging in the several million dollar range.

Atty. Pinter advised that if the deed restriction were lifted, the application would have to go back to the Zoning Commission to deal with any planning issues, and then the FAA Commission would meet to confirm their recommendation. The FAA would want to see new deed language. The FAA set out issues of concern in the email referenced by Paul Estefan, but simply said the City may be at risk.

Council member Rotello asked for clarification on the deed restriction and ownership of the property. Atty. Pinter advised that the City sold the property to Sadler, who sold it to the petitioner and as the seller; the City placed a deed restriction in 1948. Council member Rotello further stated that he has some concerns, but favors a restaurant at the airport, but is uncomfortable using this process to create a restaurant and that the property was purchased by the petitioner with the restriction. He would like to see the petitioner work with zoning to create an airport enterprise zone.

Council member Cavo concurred with Council member Rotello's comments regarding removing the deed restriction. The petitioner purchased the property two years ago and he is not comfortable with requests to lift the restriction after sale. He also expressed concern with safety and the FAA's lack of a ruling.

Petitioner Chris Orifici stated that the restaurant would create approximately fifty jobs and would promote Danbury, other businesses and the airport itself. The deed restriction is antiquated and was created in 1948.

Paul Estefan gave a brief history of an incident causing the FAA to withhold funding and the effects of that decision on the airport and other operators. The FAA has approximately \$25M invested in the airport.

Chairman Knapp expressed his concern that he would like to seek a way to amend the deed pending the approval of the FAA. He recommended extending the committee to seek a firm answer from the FAA. Atty. Kahn concurred with the proposal to meet with the FAA and Paul Estefan as a group. Atty. Pinter suggested that a representative from Planning and Zoning attend the meeting as well.

Council member Cavo moved to continue the committee, and that the petitioner and the airport administrator meet with the FAA for the purpose of retrieving a clearer answer about the do's and the don'ts about lifting the deed restriction and invite Dennis Elpern, Director of Planning; to the next committee meeting and also that the Office of Corporation Counsel research any fees associated with lifting the deed restriction and reconvene at the chairman's call based on that information. seconded by council member Rotello. ***Motion passed by unanimous vote.***

Council member Cavo moved to adjourn at 7:11pm, seconded by council member Rotello. ***Motion passed by unanimous vote.***

Respectfully submitted,

Jack Knapp, Chairman

Joseph Cavo

Paul Rotello