
Further Letter in Opposition to Inclusionary Zoning PZC A-22-5 Dated Dec. 19, 2022, w/ Annexed Staturoy Markup

From : John Tartaglia <johntartaglia@me.com>

Mon, Dec 19, 2022 10:52 AM

Subject : Further Letter in Opposition to Inclusionary Zoning PZC A-22-5 Dated Dec. 19, 2022, w/ Annexed Staturoy Markup

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To : Ridgefield Planning Dept. <planningdirector@ridgefieldct.org>, Alice Dew <pzdirector@ridgefieldct.org>

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Dear Planning & Zoning Commission, See attached my letter dated Dec. 19, 2022, and my superimposed "mark-up" to PZC Draft Three of Proposed New inclusionary Zoning language Amending Ridgefield's ZR.

Please make this a part of the Viewpoint official record and disseminate as necessary before the Dec. 29 meeting.

Also, I am not finding an agenda that formally lists this item for Dec. 29, nor can I find a link to connect via Zoom, can you please send me the Zoom link so I can register and attend on Dec. 29?

Thank you

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PLANNING & ZONING
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December 19, 2022

Ridgefield Planning & Zoning Commission
66 Prospect Street
Ridgefield CT 06877

Re: PZC A-22-5 Inclusionary Zoning-Opposition to Proposed ZR Draft Language Change

To the Planning & Zoning Commission:

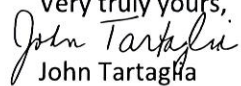
This letter expands on my earlier letter submitted to PZC and is submitted in further opposition to PZC's proposed "Inclusionary Zoning" Amendment to the ZR. Please find attached my marked up comments to PZC's "Third Draft."

Summarizing my comments superimposed on the "Third Draft":

- Use of words such as "promote" or "encourage" are intentionally misleading since the draft proposes "mandates."
- There is a lack of clarity, and thus a lack of fair public notice, as to whether or not PZC is proposing a Map Change, a Zone Overlay, and whether or not the mandate confers new or expanded rights or limitations as to every property in town, including those presently zoned one-family (RA, RAA, RAAA).
- There is no indication that PZC is considering the capabilities or limitations of DEEP and DOH Septic Regulations, indeed no indication that PZC has intention of engaging in prior Phase 1 or other environmental or any prior wetland and sewer capacity review regarding the mandate.
- There is no proof, and there is no indication that PZC has even whether or not its proposed mandate is consistent with the Town's 2020 POCD.
- Further in support of the Excel Spreadsheet I submitted earlier, which I contend demonstrates economic infeasibility, that infeasibility is compounded by the language that requires the "affordable/subsidized" units to be indistinguishable (that is identical) to other units. The mandate that the "affordable/subsidized units be spread out, but built first, confirms both economic and logistical infeasibility.
- Since PZC's present "incentive" scheme has not been effective, there is no rational, evidentiary basis upon which to base the conclusion that mandates will work. The cynical addition of "bonuses" within the mandate are consistent with the argument that neither bonuses nor mandates will work.
- The proposed "Fee-in-Lieu" is exorbitant and irrational. A "minimum fee" of \$404,100.00 for waiver of an artificially imposed mandate cannot even be justified as a lawful imposition of the taxation power, which in any event is not within the scope of PZC's enumerated powers.

- Likewise, it is unconstitutional and unlawful to mandate an owner of private party to retain a “not-for-profit”, this being an unlawful and unconstitutional delegation of power, if it exists with PZC at all.
- The proposed change violates the Town Charter and the procedures that limit action outside of the Town Meeting structure.

To conclude, PZC’s action is an unlawful and illegal attempt to exercise social control and social planning over private property, a primary means of production.

Very truly yours,

John Tartaglia

2.2 Definitions:

Inclusionary Zoning: To **promote** the development additional housing zones that require a given share of new construction be affordable by people with low to moderate incomes.

Comment: The word "promote" is misleading, this is a mandate.

4. OTHER HOUSING ZONES & USES

4.6 Inclusionary Housing Zone. See Section 8.8

8.8. Special Provisions – Inclusionary Zoning

A. PURPOSE

These regulations are intended to **encourage** the development of affordable housing within the Town of Ridgefield, consistent with Section 8-2(i) of the General Statutes of the State of Connecticut.

Comment: the word "encourage" is misleading, this is a mandate.

B. Applicability

These regulations shall apply to all zones within the Town of Ridgefield.

Comment/Question: Is this a "Map Change" proposal? A Zone Overlay superseding all existing Zones? Does this create a new zone that empowers every property in Town to build four or more housing units no matter where, so long as the owner complies with this provision, regardless of other use restrictions?

C. Requirements

1. Basic Requirement. All applications for development resulting in the creation of four (4) or more dwelling units **shall** designate a minimum of fifteen per cent (15%) of the total number of dwelling units in a manner such that the units would qualify to be counted as either "assisted housing" or "set-aside development" as defined by Section 8-30(g) of the Connecticut General Statutes (herein "Affordable Units"). In calculating the minimum requirement, fractions shall be rounded to the nearest whole number (see sample table below).
2. Phasing. For any phased project (e.g., multiple buildings/structures or other construction that will be completed in stages at separate times), **the Affordable Units shall be constructed within the first phase**, unless the Commission specifically permits otherwise in the application approval.
Comment: This is commercially unreasonable as it would require the "below cost" units to be built prohibiting the developer from earning any profit or even breaking even.
3. Integrated Site. Unless permitted by the Commission within the application approval, all projects shall be designed to mix Affordable Units **evenly throughout the site** (i.e., not clustered), sharing the same common amenities and services available to traditional units (e.g., parking, common room access, etc.), and generally the Affordable Units should not be physically identified **or otherwise distinguishable** from traditional units.

Comment: If they have to be built evenly throughout, how can they all be built first? If the same "quality" is required, does this not increase the amount of loss that a developer has to incur to create them?

D. Incentives

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1. Developments subject to the provisions of this section which exceed the Basic Requirement (defined above) by a further five percent (5%) **may be eligible** for the below incentives, at the sole and absolute discretion of the Commission.

Comment: If incentives, now in existence, didn't produce results before, what evidentiary basis is there to conclude that this "bonus", an additional "discretionary incentive" in any event, will produce results?

- a. **Density Bonus**. The Commission may grant a density bonus of additional dwelling units, in a quantity up to 30% of the otherwise permitted limit. Fractions in the density bonus shall be rounded to the nearest whole number. The density bonus units may be a combination of Affordable Units and traditional units as determined by the Commission, provided the Basic Requirement is exceeded by at least the percentage set above.
- b. **Dimension & Bulk**. The Commission **may grant** a waiver to the dimensional standards established in these regulations (including lot area, lot coverage, setback, yard, floor area, frontage, height, or similar restrictions), provided the waiver does not deviate from the original regulation by more than 25%.
- c. **Parking**. The Commission **may reduce** the parking requirements by up to twenty-five percent (25%).

E. Fee-In-Lieu

When this section would apply to a development application intended to be exclusively single-family dwelling units, the Commission may grant a waiver of all or some of the required Affordable Units, in exchange for payment of a cash fee in lieu of constructing the waived quantity of affordable units. The fee shall be equal to **300% of the Danbury, CT HUD Metro FMR Area Median Income (i.e., \$134,700 in FY2022)**, multiplied by the number of waived Affordable Units. The fee shall be paid to either: (a) a housing trust fund for the Town of Ridgefield, if one exists, or otherwise (b) another Commission-designed entity focused on providing affordable housing within the Town of Ridgefield.

Comment: Charging a \$404,100 "fee" is unreasonable, excessive, and unconscionable tax.

F. Administration

The applicant shall submit an affirmative fair housing marketing plan for the below market rate dwelling units. **All dwelling units shall be offered for sale or rent in compliance with all applicable Federal and State Fair Housing laws.**

Comment: By this does PZC mean to extend all Fair Housing Regulations to single family homes of min. 4 units? Or less?

Any application under this Section shall identify **the non-profit entity or property manager who will be responsible for program administration.** The program administrator is subject to the approval of the Commission or its designated representative.

Comment/Question: By what statutory or constitutional power does PZC claim the right to require a private developer to retain "a non-profit entity", who pays for that entity?

1. The program administrator shall:

a. Annually review and certify to the Commission the annual income of households residing in below market rate dwelling units in accordance with a procedure established in advance and approved by the Commission.

b. Maintain a list of eligible households in each category, who have applied for participation in the program. Applicants within each category shall be selected by lottery, conducted in accordance with a procedure established in advance of said lottery and approved by the Commission, or its designated representative.

c. Annually certify to the Commission that the selected household actually resides in the below market rate dwelling unit.

d. Certify to the Commission that below market rate dwelling units sold or re-sold do not exceed the maximum purchase price as calculated in a manner consistent with the methodology for maximum housing payment calculations in set-aside developments outlined in Section 8-30g of the Regulations of Connecticut State Agencies, as adjusted for family size.

e. Certify to the Commission that below market rate dwelling units for rent shall not exceed the maximum monthly rent as calculated in a manner consistent with the methodology for maximum housing payment calculations in set-aside developments outlined in Section 8-30g-8 of the Regulations of Connecticut State Agencies, as adjusted for family size.

2. Deed Restrictions: In order to maintain below market rate units for at least forty years or the life of the unit, whichever is longer, the following restrictions shall apply:

a. Below market rate units for sale shall be restricted by title to require that, in the event of any resale by the owner or any successor, the resale price shall not exceed the then maximum sales price for said dwelling unit, or the sum of the original purchase price and the cost of any documented fixed improvements made by the owner, whichever is greater.

b. Below market rate units for rent shall be restricted by title to require that the rents for said units shall not exceed the maximum rent as determined annually in accordance with (e) above.

Comment/Question: Where in the Property Law of the State of Connecticut does PZC find the right to legislate “perpetuity” impositions on real property. Is there a proceeding for judicial review or removal of a “perpetuity” imposition?

