

STATE OF CONNECTICUT
TOWN OF RIDGFIELD
PLANNING AND ZONING COMMISSION

RECEIVED

JAN 11 2023

PLANNING & ZONING
COMMISSION

*In Re: Planning and Zoning
Commission Self-Initiated Application # A-22-5
Seeking to Amend the Zoning Regulation
to Mandate Inclusionary Zoning*

Affidavit in Opposition
of John Tartaglia
January 10, 2023

John Tartaglia, a 12 year resident and elector of the Town of Ridgefield, residing at 638 Danbury Road. # 64, opposes the Application and states:

The Public Hearing of December 27, 2022, demonstrates that PZC is prejudiced and is acting beyond the scope of its legitimate power and in an arbitrary, capricious, and irrational manner.

- The Application proposes sweeping and unprecedented mandates. No other Regulation imposes, by force, a “social policy” broadly governing a principal means of production.
- RPZC offered absolutely no proof of “housing shortage” or “unhoused emergency” in Ridgefield. There is no urgency to act.
- RPZC has no legal power to impose a “tax,” and the proposed penalty is nothing but that.
- RPZC’s self-initiated scheme, presented by the Chairman as a *fait accompli*, will distort market value, confer unprecedented government control of Property, cede control of Property to the whim of an unspecified “not-for-profits;” establish a punitive, disproportionate, and illegal “fee,” and birth an undelimited “Housing Trust Fund” with no budgetary, political, or public oversight.
- RPZC has conducted no Economic, or Regulatory or Environmental Impact Evaluation.
- RPZC’s action violates the State and Federal Constitutions, The Town’s Charter, The Town’s Laws, and Guidelines and will result, among other things, in unjust taking of Property.

RPZC is a Subordinate Committee & Should Not Act Outside the Town Meeting Structure

Contrary to the Chairman’s stated position, RPZC is not superiorly “empowered” by the State Legislature. It is a creature of the Town Charter (Charter, Article 2 & 3) and thus subordinate to the Board of Selectmen and the Town Meeting process. Every Deliberative Body “created” by a Legislative Body, is subordinate to that Legislative Body (RONR 12th, Chap. 1). PZC’s police power is limited to the Plan of Conservation and Development (“RPOCD”), Charter Sec. 4-11. RPZC has no power to tax under

the Town Charter and may not impose a punitive penalty, calculated under its “rough draft” as being a minimum of \$401,100.00.

RPZC’s Proposal Contravenes RPOCD

Ninety Three and one half percent (93.5%) of the land in Ridgefield is designated as “low density residential”, yet the proposed new law would impose “high density” mandates, which contravenes the RPOCD (p. 16). Higher density, multi-family land allocation is 2% (RPOCD, p. 17). RPZC’s proposed law will turn this allocation upside down.

The three principal purposes of RPOCD are: preserving open space, invigorating downtown, protecting natural resources. RPZC submitted no proof that its proposal will accomplish any of these goals. Indeed, on the very same night of the Public Hearing RPZC voted to change its regulations in order to limit development of residential in Town Center by increasing parking requirements in mixed use development, this, placing the burden squarely on the shoulders of house owners. RPZC has also failed to submit evidence that its legislation furthers RPOCD Sustainability Goals (pp. 24-32). In fact, the proposed legislation will contravene these Goals by moving higher density housing development outside of Town Center, to areas that have little or no access to employment, transportation, or retail.

Mandates Are Not Prescribed in The Affordable Housing Plan

Ridgefield’s Approved Affordable Housing Plan (RAHP) did not require or mandate any particular form of Affordable Housing Zone Change: “*The Planning & Zoning Commission should consider adopting an inclusionary housing regulation.*” RAHP Sec. 9.1.4. RAHP’s language consists only of non-binding recommendations for various Town agencies “to consider” or “to review” various options, and here RPZC has only presented *diktat* (the “rough draft”), with no alternatives. The enabling statute, Conn. Gen. Stat. 8-1 provides that a zoning commission created under a Town’s Charter *may* exercise the power granted under Conn. Gen. Stat. Chapter 124. Similarly, Conn. Gen. Stat. 8-2. i provides that a municipality *may* implement some form of inclusionary zoning, but it is not mandated. Discretionary power, if it exists with RPZC, requires the exercise of reason, the review of all options and an informed choice after full public Here RPZC has already made up its mind.

RPZC Has Failed to Sustain Its Burden of Proof

Despite PZC’s own requirement that the Applicant in any zoning regulation amendment sustain its burden of proof, PZC submitted no evidence, no testimony, no data, no documentation, no expert opinion.

There is no proof of emergency in Ridgefield. Lack of urgency can be inferred by the 6,500 unused Section 8 Housing Vouchers in Connecticut, cf., December 4, 2022 news article: <https://therealdeal.com/2022/12/04/half-of-section-8-vouchers-have-gone-unused-in-connecticut/>.

RPZC is solely relying on (a) an inapposite comparison to Darien's regulations, and (b) the Chairman's "feeling" that mandatory IZ "just felt right" for Ridgefield.

Reliance on Darien was arbitrary, capricious, and irrational: Darien has double the median income of Ridgefield, and 50% more annual household income, ranking # 2 in the State (Ridgefield is # 7). Darien is 300% more dense, and has, over the last several years, grown 200% faster than Ridgefield, whose growth has remained remarkably static. Darien is a coastal city, with significantly more infrastructure. Ridgefield is tucked in a nook of western Connecticut and is served by two single lane arterial highways neither of which are capable of being widened with limited public sewer or water. Darien is far more proximate to Stamford, Greenwich, and New York City; it is served by two major highways, has a major railroad station and significant omnibus access.

A recent article in the CT Mirror (December 30, 2022) indicates that Darien has not used any of the \$6.4 M of Federal Stimulus Funds that it received for affordable housing, instead focusing on infrastructure and community projects. Leadership in Darien is described this as logical: *"The Town ...has historically not played much of a role in the creation of affordable housing...units that (were) added have been prepared, funded and managed solely by private developers...We (Darien) don't want the Town in the business of doing affordable housing."*

The Chair's reliance on his personal "feeling" is irrational.

Economic Infeasibility-Objective Data & Evidence

The reason for the size of the proposed "penalty" (\$401,100.00/theoretical unit) is not stated. This figure probably underestimates the "market cost to build one affordable/subsidized unit." The Excel Spreadsheet that I submitted earlier, and the feasibility calculation now attached (**Exhibit A**) support the argument that RPZC's action is economic suicide.

The economic feasibility calculation ("**Exhibit A**") uses a standard algorithm found at the **Grounded Solutions Network** website: <https://calc.inclusionaryhousing.org/ihc>. This website is sponsored by **The National Housing Conference** and **The Lincoln Institute for Land Policy**.

The economic feasibility calculation assumed a 10 unit project, consisting of total 10,000 sf, 12% common area, low rise multi-family, situated on one acre, with FAR 0.24, 23 parking spaces, no tax abatement, no subsidization, at market rental rent for our zip code, 12.46% soft cost. It assumed "impact fees," the "low estimate" of all Town applications and approvals now in place, of \$100,000 (\$10,000 per

unit), with additional 5.3% other development costs; 60% market rate construction loan financing; 1.2% “loan points;” land costs of \$500,000 and, using the Chairman’s suggestion of “round up” applying 20% (2 units, not 1.5) as affordable. The result confirms economic infeasibility. This is not shocking to me. What is shocking is that no one on the Commission has considered or discussed such calculations. Moreover, had RPZC conducted a careful search of existing State legislation, it would find that there is very little public funding available to subsidize the inevitable deficit funding. Careful consideration reveals that the State is shifting its burden to subsidize to the Town, effectively a left-handed “tax.”

Mandatory IZ shifts the substantial economic burden of subsidization of very low income rental housing from the state to private owners of Property. “On its own, the private market cannot and will not build and operate homes affordable to extremely low-income families,” Blumenthal, Handelman & Tisley, “How Affordable Housing Gets Built”, July 26, 2016.

“Only a sustained public commitment can ensure that the lowest- income renters, who are disproportionately people of color, have stable, accessible, and affordable homes.” “The Gap”, National Low Income Housing Coalition, April 2022, at p.22 (Note: This publication states that Connecticut is one of the “least severe” for housing shortage in New England, as well as in the United States, *id.* p.10). Without substantial state or federal subsidization, mandates will fail.

RPZC Fails to Consider Other Economic Data & Research

RPZC has not considered the many studies which demonstrate the economic infeasibility of mandatory IZ:

- Bento, Lowe, Knapp & Chakraborty, “Housing Market Effects of Inclusionary Zoning,” Cityscape- A Journal of Policy Development & Research, Vol. 11, No.2 (2009), U.S. Dept. of Housing & Urban Development.
- Hamilton, E. “Policy Brief- Inclusionary Zoning Hurts More Than It Helps,” Mercatus Center, George Mason University (2021).
- Hamilton, E. “Inclusionary Zoning and Market Outcomes” Mercatus Center, George Mason University (2019).
- Powell, Stringham & Moore. “Housing Supply and Affordability: Do Affordable Housing Mandates Work?” Reason Foundation (2004).
- Amici Brief, Scholars of Land Use Regulation, before the United States Supreme Court, 616 Craft Avenue Associates v. City of West Hollywood, California, U.S. Sup. Ct. Docket: 16-1137, May 2017, and references cited therein.

The Chairman chose to incorporate by vague reference prior “conversations” which allegedly took place among Commissioners prior to the Public Meeting, of which there was no evidence. This is arbitrary and capricious, and violates the Freedom of Information Law, and the Guidelines.

The Chairman stated that he had an undocumented “conversation” with a Town attorney, insinuating that a Town attorney had rendered an “attorney opinion” approving the Commission’s action, but there is no evidence of any “attorney opinion.” This is arbitrary, capricious, and violates Chapter Five of the Guidelines, and the Freedom of Information Act.

Mandatory IZ’s Questionable Political Basis & Its Unintended Consequences

Mandatory IZ is, at its essence, an attempt at the “decommodification of housing,” a means of “central planning” to effectuate government control of a principal method of production (*Karl Marx, “Das Kapital”*). Its analytical roots are found in the socialist anarchist movement: *Kober, E. “Decommodifying Housing and Other Magical Thinking”, E21-Manhattan Institute, December 11, 2019; Ayers, P., Capitalism’s Housing Crisis: The Socialist Alternative, Dec. 2017, and “The Rent is Too High: Fight for Universal Rent Control” March 2019. Found at: <https://www.socialistalternative.org> ; Dreier, P. “Less Rent: More Control”, Democratic Socialist of America, Dec. 2019, Democratic Socialists of America, <https://www.dsausa.org/> ; Open Communities Alliance, <https://www.ctoca.org/>. Socialist theories of Central Planning have been shown throughout history to have enormously negative consequences, cf. “The Law” C.F. Bastiat; “The Road to Serfdom” F.A. Hayek; “The Tragic Failure of Keynesian Economics”, S. Kates, IEA (UK), July 30, 2009, <https://iea.org.uk/blog/the-tragic-failure-of-keynesian-economics#> .*

Mandatory IZ can be traced back to failed US Dept. of Housing in Urban Development “lab rat social experimentation in the 1990’s, cf., *Geronimus & Thompson, “Moving to Opportunity,” Du Bois Review: Social Science Research on Race,1(2),247-279.*

Central Planning of Affordable Housing, even with public subsidization, has notoriously failed in New York City, e.g., *The New York City Housing Authority; Read, B. New York Magazine, Oct. 22, 2022, “13 Years, 3 Mayors, Countless Community Board Meetings, and Just One Building -The tortured path to 112 affordable apartment units in Hell’s Kitchen;” New York Post, Editorial Board, “How Extreme Rent Rules Deepen NYC’s Housing Crisis”, January 6, 2023; New York Times, June 2, 2022, “New York Lawmakers Embrace Funding Plan to Rescue Public Housing.”*

Exposure to Legal Challenge

RPZC’s “rough draft” imposes a new duty on anyone who owns any Property in any zone in Town who wants to build anything on a parcel that could sustain a minimum of four dwelling units. All such owners must build or include residential, must convey, by deed or lease, 15% of any attempted +4

residential 15% set aside at an “affordable”, not fair market, price, or pay a minimum penalty of \$401,100.00 per theoretical affordable housing unit not so built. RPZC is arbitrarily, capriciously, and irrationally and retroactively imposing a substantial economic burden upon Private Property (*Papers of James Madison, Papers 14:266-268, “Property” March 29, 1792*) without compensation. Article 11 of the Connecticut State Constitution provides: *The Property of no person shall be taken for public use, without just compensation therefor.*

Whether or not RPZC had obtained a detailed “attorney opinion”, which I doubt, any civilian can perform a rudimentary internet search which reveals , mandatory IZ is subject to a high level of judicial scrutiny within a turbulent, and unsettled area of the law, e.g., *The Free Dictionary (Farlex):*

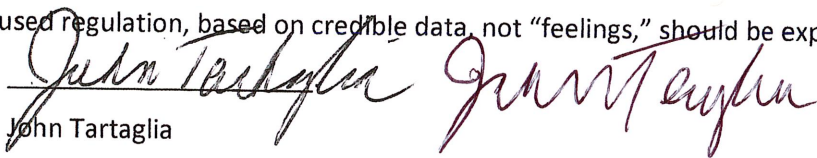
<https://legaldictionary.thefreedictionary.com/Zoning+regulations:>

“(Zoning)regulations must meet the demands of the constitutional prohibition against taking private Property for public use without just compensation as mandated by the Fifth and Fourteenth Amendments to the U.S. Constitution as well as by the constitutions of the states. The U.S. Supreme Court decided three cases that have had considerable impact in this area: *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798(1992); *Lujan v. National Wildlife Federation*, 497 U.S. 871, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990), and *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309,129 L. Ed. 2d 304 (1994). The decisions made it more difficult for municipalities to require that land developers give up part of their property for public purposes, such as access to lake shores, sidewalks, access roads, ... If government needs (private) land, it must compensate the owner by exercising its power of Eminent Domain”

The illusory “incentives” tacked on, which are reserved to the “sole discretion” of RPZC, cannot in anyway be considered as due process or just compensation.

Conclusion

Please withdraw this Application and start anew. There should be hearing that explores all alternatives, all available evidence, a real “conversation” about various “concepts.” Begin from a neutral, not predetermined, perspective. Prudence and Restraint are two of the fundamental principles of civil government, *Declaration of Independence, July 4, 1776*. At the very least, a less broad, more focused regulation, based on credible data, not “feelings,” should be explored.


John Tartaglia

State of Connecticut)
Town of Ridgefield) SS. Ridgefield

On the 14th day of January 2023, there appeared before me, John Tartaglia, who duly identified himself to me, signed the foregoing in my presence and swore to the truth, to the best of his knowledge, information, and belief, to the contents thereof.


Notary Public

WENDY GANNON LIONETTI
NOTARY PUBLIC
MY COMMISSION EXPIRES NOV. 30, 2023



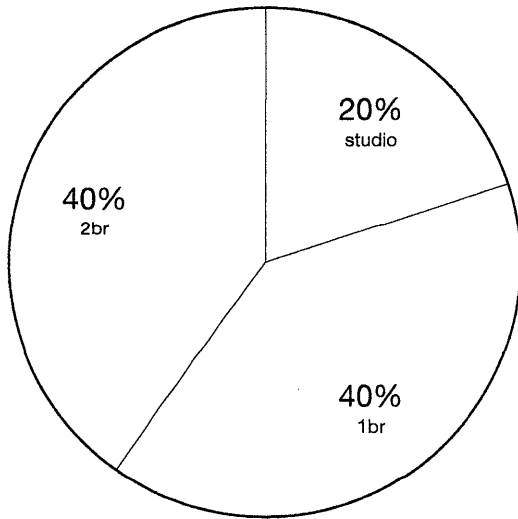
GROUNDED SOLUTIONS

strong communities
from the ground up

Made with: <https://calc.inclusionaryhousing.org/>

Project Summary	Studio	1br	2br	3br	4br	Total	%	Area (sq. feet)
Approximate Unit Size	727	858	1,114	1,322	1,506			
Base Market Rate Units	2	3	3	0	0	8	80%	7,368
Bonus Units	0	0	0	0	0	0	0%	0
Total Market Rate Units	2	3	3	0	0	8	80%	7,368
Affordable @ 100% AMI	0	0	0	0	0	0	0%	0
Affordable @ 80% AMI	0	1	1	0	0	2	20%	1,972
Affordable @ 60% AMI	0	0	0	0	0	0	0%	0
Total Affordable Units	0	1	1	0	0	2	20%	1,972
Total Project Units	2	4	4	0	0	10	100%	9,340

Project Unit Mix



Project Units Breakdown

Rent Schedule	Studio	1br	2br	3br	4br	Total	%
Market Rate Units	\$2,828	\$3,479	\$3,857	\$5,174	\$5,496	\$27,664	91.26%
Bonus Unit Total	\$2,828	\$3,479	\$3,857	\$5,174	\$5,496	\$0	0%
Affordable @ 100% AMI	\$1,363	\$1,558	\$1,753	\$1,948	\$2,103	\$0	0%
Affordable @ 80% AMI	\$1,091	\$1,246	\$1,402	\$1,558	\$1,683	\$2,649	8.74%
Affordable @ 60% AMI	\$818	\$935	\$1,052	\$1,169	\$1,262	\$0	0%
Commercial Space Rent						\$0	0%
Other Rental Income						\$0	0%
Gross Potential Income / mo	\$5,657	\$11,683	\$12,973	\$0	\$0	\$30,313	100%

Price Schedule	Studio	1br	2br	3br	4br	Gross Sales Proceeds	%
Market Rate Units	\$0	\$0	\$0	\$0	\$0	\$0	0%
Bonus Unit Total	\$0	\$0	\$0	\$0	\$0	\$0	0%
Affordable @ 100% AMI	\$267,314	\$305,502	\$343,690	\$381,877	\$412,428	\$0	0%
Affordable @ 80% AMI	\$213,851	\$244,401	\$274,952	\$305,502	\$329,942	\$519,353	100%
Affordable @ 60% AMI	\$160,388	\$183,301	\$206,214	\$229,126	\$247,457	\$0	0%
Gross Sales Proceeds	\$0	\$244,401	\$274,952	\$0	\$0	\$519,353	100%

Project Size			Rental Income & Project Value	
	acres	sq. feet		
Unloaded Area		9,340	Gross Potential Income (annual)	\$363,753
Common Area		1,274	Less Vacancy	\$25,463
Commercial Space		0	Gross Rental Income	\$338,291
Total Built Area		10,614	Less Operating Costs	\$186,060
Site Area	1	43,560	Tax Abatement	\$0
Floor Area Ratio		0.24	Net Operating Income (NOI)	\$152,231
Dwelling Units/Acre		10.00	Cap Rate	7.5%
			Gross Value	\$2,029,744
			Sales Marketing Costs	\$40,595
Parking	%	#	Net Project Value	\$1,989,149
Parking Ratio (spaces per unit)	225%	23		
Parking Reduction Incentive	0%	0		
Net Parking Ratio	230%	23		

Revenue & Project Value

Gross Sales Proceeds	\$519,353
Sales Marketing Cost	\$10,387
Net Project Value	\$508,966

Cost Analysis	\$ % of TDC	
Construction Costs	\$2,918,750	53.8%
Parking Costs	\$460,000	8.48%
Residential Impact Fees	\$100,000	1.84%
Affordable Housing Fee	\$0	0%
Condo Wrap Insurance	\$0	0%
Soft Costs	\$675,750	12.46%
Other development costs	\$300,000	5.53%
SubTotal Hard and Soft Costs	\$4,454,500	82.12%
Financing Costs		
Construction Loan Amount	\$3,220,425	59.37%
Interest on Construction Loan	\$405,774	7.48%
Points on Construction Loan	\$64,409	1.19%
Land Costs	\$500,000	9.22%
Gross Development Cost	\$5,424,682	
Affordable Housing Subsidies	\$0	0%
Net Total Development Cost (TDC)	\$5,424,682	
TDC Per Unit		\$542,468

Profitability	\$ Profit as % of TDC Yield on Cost		
Estimated Profit	\$-3,435,533	-63.33%	2.81%
Minimum Profit	\$1,084,936		5.5%
Is Project Feasible?	No		
Value Capture Opportunity	\$-4,520,469		
Residual Land Value	\$500,000		

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Fatal error: Uncaught Error: Call to undefined function dbquery() in /home/gsnihc/public_html/ihc/_print.php:257 Stack trace: #0 /home/gsnihc/public_html/ihc/index.php(45): include() #1 {main} thrown in /home/gsnihc/public_html/ihc/_print.php on line 257