



Justin Elicker
Mayor

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MEMORANDUM

To: JUSTIN ELICKER, MAYOR
From: PATRICIA KING, CORPORATION COUNSEL
Date: JUNE 22, 2021
Re: NEIGHBORHOOD ASSISTANCE ACT

I am writing this memorandum pursuant to a request for a summary of the City's considerations as to the eligibility of certain housing corporations in which Rabbi Daniel Greer has an interest to apply for tax credits pursuant to the Neighborhood Assistance Act (NAA), Conn. Gen. Stat. §12-632 et seq. At the time this issue was reviewed, no written legal opinion was issued as none was requested. Since that time, the issue has received media attention because the Board of Alders recently held a public hearing as required by statute to approve a list of programs eligible for NAA submitted by the staff at Livable City Initiative (LCI). This list included applications from the corporations affiliated with Greer (the Entities).

BACKGROUND

Greer is a rabbi who was convicted of sexually assaulting a student at his Edgewood Yeshiva between 2002-2005. Greer was sued civilly by his victim who obtained a civil judgment against him in the amount of \$22,281,987.81. The victim has since sued the six Greer-affiliated Entities in federal court alleging that the Entities are controlled by Greer and are involved in fraudulently hiding assets to avoid paying the judgment. In August 2020, a federal court judge prohibited the Entities from transferring any personal property and from transferring or encumbering any real property they own. It should be noted that there is no order prohibiting the Entities from applying for benefits under the NAA.

The Greer-related Entities are non-profit corporations that provide housing to low- and moderate-income tenants and have been approved for participation in the NAA program in the past. The six Greer-related Entities reportedly own 53 affordable rental properties in New Haven.

This issue came to the City's attention in the fall of 2020 after media reports that the Greer Entities were approved by DRS to receive tax credits under the NAA.

In the fall of 2020, Cathy Schroeter, Deputy Director of Administrative Services, sent an email to the Commissioner of DRS specifically regarding the injunction issued in the federal court lawsuit and the Greer-affiliated Entities involved. A copy of the injunction

was attached with a suggestion that DRS may want to seek counsel on how this may or may not affect the state approval for 2020 NAA benefits.

In April 2021 Ms. Schroeter sent another email with the same message again attaching a copy of the injunction. As a result of that email Ms. Schroeter spoke with DRS staff who again requested a copy of injunction which was again provided. Ms. Schroeter has had no further contact from DRS. At this point, the City does not believe further action is necessary to bring the issues regarding the Greer-affiliated Entities to DRS' attention.

CITY REVIEW

On October 6, 2020 members of City staff, including Corporation Counsel, the Director of Economic Development and LCI staff, participated in a meeting to discuss the City's role in administering NAA, a state program administered by the state Department of Revenue Services (DRS) for non-profit and for-profit entities that provide certain services to the community through which tax credits are available for investments made in those entities. The relevant statutes, C.G.S. §12-632 et seq. were reviewed and discussed. Ms. Schroeter's view was that the statute requires her to collect and process the applications to ensure that they meet eligibility requirements as set forth in the statutes and that applications are complete. She compiles a list of all those applicants found to be eligible and forwards that list to the Board of Alders (BOA), which must hold a public hearing to approve the list of applicants, also as required by statute. Once the BOA approves the list, the City forwards the list to the state DRS for a decision as to which applicants will receive benefits under the program. The statute is very clear that the decision as to which programs will be able to participate in the program is within the sole authority of the DRS. The BOA approval process is limited to the considerations for eligibility under the statute.

ANALYSIS

Ms. Schroeter's actions are consistent with the statute. Conn. Gen Stat. §12-262 specifies the types of programs eligible for investment, including "construction or rehabilitation of dwelling units for families of low and moderate income." The statutes require the municipality to make a list which must include information about each program: the concept of the program, the neighborhood served, why the program is needed, the estimated amount required to be invested in the program, the suggested plan for implementing the program, the agency designated to oversee implementation of the program and other such information as may be required. The list is submitted to the municipality's legislative body, which is required to hold a hearing on the subject of which programs included on the list will be approved for submission to the commissioner. Conn. Gen. Stat. §12-636 clearly states that it is the Commissioner of DRS who makes the decision as to which applicants are approved for the benefit, that the Commissioner's decision to be in writing and that it set out the maximum credit allowable to the approved applicant.

Under the general principle that the City only has the authority allocated to it by the state, the role of the municipal legislative body in approving the list is limited to the extent of approving the applications as complete and consistent with state requirements. Since the decision to approve the applications is only within the province of the Commissioner of DRS, there is no authority for the municipality's legislative body to make such a decision. The statute also requires the legislative body to hold a public hearing on the approval process, which is somewhat incongruous with the limited authority granted to it under the statute, particularly after the 2010 amendment discussed below, and leads to some confusion as to the municipality's role.

It is important to note that the statute was amended in 2010. The amendment has been described as "legislation [that] eliminates the municipalities' role in approving a business firm's application, leaving the Commissioner as the sole decision-maker. John R. Shaughnessy, Scott E. Sebastian, 2010 Connecticut Tax Law Developments, 85 Conn. B.J. 71, 74 (2011).

It is obvious that the municipality's role in the approval process was severely curtailed because the amendment removed from the Commissioner's consideration in its approval process the question of whether the municipality had approved or disapproved a particular applicant's proposal. The changes put into effect by the amendment further support the City's position that its limited actions are correct and in compliance with the intent of the statute.

The text of the amendment is set out below, with language added by the amendment noted by underlining, and language deleted noted by strikethrough:

"Sec. 9. Subsection (c) of section 12-632 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2010):

<< CT ST § 12-632 >>

(c) Any business firm which desires to engage in any of the activities or programs approved by any municipality pursuant to subsection (a) of this section and listed pursuant to subsection (b) of this section may apply to the Commissioner of Revenue Services for a tax credit in an amount as provided in section 12-633, 12-634, 12-635 or 12-635a, as amended by this act. The proposal for such credit which shall be made on a form prescribed and made available by the commissioner, shall set forth the program to be conducted, the neighborhood area to be invested in, the plans for implementing the program and such other information as said commissioner may prescribe. Such proposals shall be submitted to the commissioner on or after September fifteenth but no later than October first of each year. ~~The commissioner shall refer the proposal to the agency designated by the municipality to oversee implementation of the program, pursuant to the provision of subsection (a) of this section, and such agency shall, within thirty days of the date of referral, approve or disapprove the proposal. Failure of such agency to respond within thirty days of the date of referral shall be deemed to constitute disapproval of such proposal. Following such referral and approval or disapproval,~~ Such proposals shall be approved or disapproved by the Commissioner of Revenue Services based on the compliance of

such proposal with the provisions of this chapter, ~~municipal agency approval or disapproval~~ and regulations adopted pursuant to this chapter. The commissioner may only approve proposals received in his office between September fifteenth and October first of each year, ~~after approval by the municipal agency affected by such proposal.~~ If, in the opinion of the Commissioner of Revenue Services, ~~and the municipality or municipalities affected,~~ a business firm's investment can, for the purposes of this chapter, be made through contributions to a neighborhood organization as defined in subsection (h) of section 12-631, tax credits may be allowed in amounts as provided in section 12-633, 12-634, 12-635 or 12-635a, as amended by this act."

TAXATION—STATUTES—GENERALLY, 2010 Conn. Legis. Serv. P.A. 10-188 (H.B. 5494) (WEST)

The City also is required by §12-637a to certify an audit from each participant. Under the statute, the City has an equally limited role, which is to verify that the participant used the funds in accordance with its proposal. After the municipality certifies the audit, it sends it to the Commissioner, who has specific authority to review the audit for evidence of fraud or embezzlement. Again, the appropriate use of the funds is reserved as a subject for review by the Commissioner.

OTHER CONSIDERATIONS

In May 2021, the Board of Alders sought a written opinion from counsel on its role in the NAA application process. Attorney Steve Mednick concluded that the role of the Board of Alders in the approval process was limited to the areas as specified in the statute for eligibility. This does not include the authority to fail to approve a program on any other grounds. This is consistent with the view of Corporation Counsel and the implementation of the program by LCI staff and the Board of Alders. There is no evidence that any member of the public attended the public hearing on the approval to testify against the approval of the Greer-affiliated Entities.

No City or state funds go directly to any of the approved applicants through the NAA. The NAA allows investors in these approved corporations to get tax credits as allocated by the Commissioner, but the participants only get resources to the extent there are investors. The program acts as an inducement to investors but does not provide any funds directly to any participant.

While no one in the City administration in any way condones the sexual abuse of children or the hiding of assets from a judgment creditor, the statute as currently written constrains the City from taking either of these factors into consideration in the approval process. It should be noted that the issue of the role of the Entities is already under review in the federal court in the lawsuit filed by Greer's victim against those Entities. If a motion to prohibit the Greer-affiliated Entities from participating in the NAA program were filed, then a federal court would be free, after due process, to issue a decision.

Further, the City has taken steps to bring these issues to DRS' attention through the fall 2020 and April 2021 email and phone contact between Ms. Schroeter and DRS staff. The City now is confident that DRS as the decision maker is aware of the concerns raised by the participation of the Greer-affiliated Entities in the program and of the injunction issued by the federal court, and can make whatever use it wants of that information.

CONCLUSION

Based upon a review of the relevant statutes and of the City's actions in processing the NAA applications, the City has acted appropriately in this process and in compliance with its statutory obligations.