

GEORGE JEPSEN
ATTORNEY GENERAL



55 Elm Street
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Hartford, CT 06141-0120

Office of the Attorney General
State of Connecticut

February 6, 2015

The Honorable Melody A. Currey
State of Connecticut Department of Administrative Services
450 Capitol Avenue
Hartford, CT 06106

Dear Commissioner Currey:

This letter responds to former Commissioner Donald J. DeFronzo's December 31, 2014 letter seeking an opinion as to whether language and conditions contained in a proposed draft deed between the City of New Britain and a private developer would: (1) satisfy the City of New Britain's statutory obligation to use the parcel for the purposes specified in Section 143 of Public Act 12-2 (June 2012 Special Session); and (2) extinguish the reverter contained in the October 7, 2013 deed pursuant to which the State of Connecticut conveyed the property to New Britain. For the reasons set forth below, we conclude that the language and conditions contained in the proposed draft deed would accomplish both purposes, provided that the deed is executed prior to October 7, 2015.

BACKGROUND

Section 143 of Public Act 12-2 provides, in pertinent part, as follows:

- (a) Notwithstanding any provision of the general statutes, the Commissioner of Administrative Services, on behalf of the Chief Court Administrator, shall convey to the city of New Britain a parcel of land located in the city of New Britain, at a cost of sixty thousand dollars plus the administrative costs of making such conveyance. . . .
- (b) The city of New Britain shall use said parcel of land for economic development purposes. If the city of New Britain: (1) Does not use said parcel for said purposes not later than two years after the conveyance of said parcel; or (2) Leases all or any portion of said parcel, the parcel shall revert to the state of Connecticut.

The State conveyed the parcel at issue to the City of New Britain via Quit Claim Deed dated October 7, 2013 (attached hereto as Exhibit A). In accordance with Public Act 12-2, the deed provided that the property was "conveyed subject

to the requirement the Grantee [City of New Britain] use said property for economic development purposes. If Grantee [City of New Britain] does not use the Property for said purposes within two years after the date this Quit Claim Deed is approved by the Attorney General or Grantee leases all or any portion of the Property, the Property shall revert to the State of Connecticut."

The parcel at issue consists of vacant land adjacent to the New Britain Superior Court parking garage. The City plans to sell the parcel to a private developer via a proposed quit claim deed (the "Proposed Deed, attached hereto as Exhibit B). The Proposed Deed includes a covenant providing that the "Releasee [private developer] shall commence the construction of improvements for economic development purposes on the property hereby conveyed within five (5) years from the date of this Deed and shall complete such improvements within two (2) years from the commencement of such construction." The Proposed Deed further provides that in the event such covenant is breached and such breach is not cured, "then all estate conveyed under [the Proposed Deed] shall cease and terminate and title in fee simple to the same shall revert to and become revested fully and completely in [the Releasor City of New Britain]...." Finally, in the event title reverts to New Britain, the Proposed Deed provides that New Britain "shall, pursuant to its responsibilities under applicable law, use its best efforts to resell the property or part thereof (subject to such mortgage liens hereinbefore set forth and provided) as soon and in such manner as [the City of New Britain] shall find feasible to a qualified and responsible party or parties (as determined by [New Britain]) who will assume the obligation of making or completing the improvements or such other improvements in their stead as shall be satisfactory to the [City of New Britain] and in accordance with the uses specified for the above described property."

ANALYSIS

You have asked whether a conveyance of the property to a private developer pursuant to the Proposed Deed satisfies the requirement, contained both in Public Act 12-2 and the Quit Claim Deed between the State of Connecticut and the City of New Britain, that the City of New Britain use the property for economic development purposes. The resolution of that question turns on the interpretation of the requirement that the City "use" the property "for economic development purposes" in the legislation authorizing the conveyance of the property.

Statutory language must be construed in a manner that is consistent with the apparent intent of the legislature. *Manifold v. Ragaglia*, 272 Conn. 410, 419

(2004). That intent is initially ascertained from the text of the statute itself and its relationship to other statutes; extratextual evidence of intent is not considered unless, from the examination of the statutory text and its relationship to other statutes, the statute's meaning is ambiguous or yields absurd or unworkable results. Conn. Gen. Stat. § 1-2z. When a statute is not plain and unambiguous, guidance may be sought in the legislative history, the circumstances surrounding its enactment, and the legislative policy it was intended to implement. *Cogan v. Chase Manhattan Auto Fin. Corp.*, 276 Conn. 1, 7 (2005).

The legislation authorizing the conveyance of the New Britain property does not define the phrase "use said property for economic development purposes," and the relevant legislative history offers no guidance as to the meaning of that phrase. Some guidance, however, may be drawn from other statutes. In the statutes relating to Connecticut Innovations, Incorporated, for example, "economic development project" is defined to include, among other things, a project that will

be used or occupied by any person for . . . manufacturing, industrial, research, office or product warehousing or distribution purposes or hydroponic or aquaponic food production purposes and which the corporation determines will tend to maintain or provide gainful employment, maintain or increase the tax base of the economy, or maintain, expand or diversify industry in the state, or . . . materially contribute to the economic base of the state by creating or retaining jobs, promoting the export of products or services beyond state boundaries, encouraging innovation in products or services, or otherwise contributing to, supporting or enhancing existing activities that are important to the economic base of the state.

Conn. Gen. Stat. § 32-23d(t); *see also* Conn. Gen. Stat. § 13b-57d(b)(3) (same definition relating to the Connecticut Transportation Strategy Board).

Based on these definitions, we concluded in a prior Attorney General opinion that the legislature generally intended the phrase "economic development" to encompass a variety of projects that support or enhance activities that advance the economic base of the state. *See* Attorney General Opinion 2007-001 (Feb. 1, 2007). In that same opinion, we opined that the "context of these statutes indicates that the legislature has used the phrase 'economic development' concerning projects that involve such purposes as industrial diversification, maintenance of the tax base, promotion of exports, and the advancement of technological innovation." *Id.*

Here, the City of New Britain does not propose to meet the statutory requirement that it "use" the property for economic development purposes by occupying the land and conducting commercial activities itself. Neither P.A. 12-2 nor the ensuing deed explains by what method New Britain "shall use said parcel of land for economic development purposes." Both the deed and the legislation authorizing the conveyance prohibit New Britain from leasing the property to a third party. The City intends to "use" the property for economic development purposes by selling it to a private developer, which will be required by the Proposed Deed to make improvements to the vacant parcel for economic development purposes. Based on the statutes defining an "economic development project," we conclude that this is a permissible way for the City to "use" the land for economic development purposes.

The statutes defining an "economic development project" explicitly state that such projects may be "used or occupied *by any person*" for activities that themselves are traditionally carried out by private actors. *See* Conn. Gen. Stat. § 32-23d(t). Those activities include "manufacturing, industrial, research, office or product warehousing or distribution purposes or hydroponic or aquaponic food production purposes." *Id.* Moreover, such activities must accomplish goals traditionally achieved through private commercial conduct. Specifically, activities must "tend to maintain or provide gainful employment, maintain or increase the tax base of the economy, or maintain, expand or diversify industry in the state, or . . . materially contribute to the economic base of the state by creating or retaining jobs, promoting the export of products or services beyond state boundaries, encouraging innovation in products or services, or otherwise contributing to, supporting or enhancing existing activities that are important to the economic base of the state." *Id.*

Because these statutes contemplate activities traditionally carried out in the private sector and the legislation authorizing the conveyance prohibits the City of New Britain from leasing the land to a third party, we conclude that the legislation permits the City of New Britain to "use" the property by conveying it to a private entity that is required to make improvements to the land for economic development purposes. To conclude otherwise would require us to interpret the legislation as requiring the City of New Britain to make such improvements itself and occupy the property for some economic development purpose. Though that may be one permissible use under the legislation, such a narrow interpretation of the law would be at odds with the broad set of traditionally private activities our statutes contemplate for "economic development projects."

Our interpretation finds support in at least one Connecticut Superior Court decision. In *Gerlt v. Town of South Windsor*, CV-04-0830901, 2004 Conn. Super. LEXIS 1439 (Conn. Super. May 28, 2004), *rev'd on other grounds*, 284 Conn. 178 (2007), the court examined a 2001 Special Act authorizing a conveyance of state land to South Windsor. The Special Act required South Windsor to "use the parcels for open space, storm water management or infrastructure improvement." The town subsequently granted an easement over the parcels to a private developer for the "purposes of promoting storm water management, infrastructure improvements, and open space." A South Windsor taxpayer brought suit seeking, *inter alia*, a declaratory ruling that since the land was being used by a private developer, and not the town, for the purposes set forth in the Special Act, the land reverted back to the State. The court rejected that claim. The court noted that in the takings context, the "test of public use is not how the use is furnished but rather the right of the public to receive and enjoy its benefit." *Id.* at *14 (quoting *Kelo v. New London*, 268 Conn. 1, 35 (2004)). The court further observed that in *Kelo*, our Supreme Court concluded "that economic development plans that the appropriate legislative authority has rationally determined will promote municipal economic development by creating new jobs, increasing tax and other revenues, and otherwise revitalizing distressed urban areas, constitute a valid public use for the exercise of the eminent domain power under either the state or federal constitution." *Id.* (quoting *Kelo*, 268 Conn. At 46).

Applying this test, the court found that the Special Act permitted South Windsor to grant the easement to a private developer because even though the private developer, and not the town, would make the actual improvements, the primary purpose of the easement was to benefit the town through economic development. *Id.* That logic applies equally here. Just as South Windsor was permitted to "use" land for a given purpose by conveying an easement to a third party, New Britain may "use" the property at issue for economic development purposes by selling it to a private developer for those purposes.

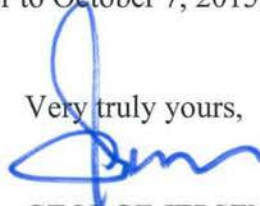
Although we conclude that the City may "use" the property by conveying it in accordance with the Proposed Deed, we cannot opine on whether any future improvements made to the property will meet the Proposed Deed's requirement that they be made for "economic development purposes." As we noted in a prior Attorney General opinion on the subject, "[a]ny project or use of property must be assessed on its facts. An economic development purpose is necessarily a fact-specific question that can only be decided on a case by case basis." Attorney General Opinion 2007-001 (Feb. 1, 2007). At any rate, enforcement of the provisions of the Proposed Deed would lie entirely in the hands of the City, and not the State.

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CONCLUSION

The Proposed Deed would satisfy the City of New Britain's statutory obligation to use the parcel for the purposes specified in Section 143 of Public Act 12-2 (June 2012 Special Session) and extinguish the reverter contained in the October 7, 2013 deed pursuant to which the State of Connecticut conveyed the property to New Britain. Because both Public Act 12-2 and the October 7, 2013 deed require the City to use the property for economic development purposes not later than two years after the State conveyed the property to New Britain, the Proposed Deed must be fully executed prior to October 7, 2015.

Very truly yours,



GEORGE JEPSEN
ATTORNEY GENERAL

EXHIBIT A

QUIT CLAIM DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, THAT IT, THE STATE OF CONNECTICUT ("Grantor"), acting herein by Denise L. Nappier, its Treasurer, duly authorized, pursuant to Public Act 12-2, Section 143, for good and valuable consideration received to its full satisfaction, does by these presents, for itself and its successors and assigns, justly and absolutely grant, remise, release and forever QUIT CLAIM unto the CITY OF NEW BRITAIN, a Connecticut municipality ("Grantee"), its successors and assigns forever, all such right and title as it, the said Grantor, has or ought to have in or to a portion of that certain piece or parcel of land commonly identified as "n/f State of Connecticut volume 1637 page 326" on a map entitled "Proposed Subdivision Map of the property located at 10 Franklin Square, New Britain, Connecticut 06051" prepared by Boundary Consulting Experts, LLC, 88 Maplehurst Avenue, New Britain, CT 06053, Revision: Original, dated May 1, 2012, for the State of Connecticut, 165 Capitol Avenue, Hartford, CT 06106, and said portion is more particularly bounded and described below (the "Property"):

1. Commencing at a City of New Britain brass disk set in the sidewalk on the northerly side of Pearl Street, N. $4^{\circ} 21' 29''$ W, 2.00 feet to the point of beginning;
2. Thence, S. $85^{\circ} 38' 31''$ W, 138.50 feet;
3. Thence N. $4^{\circ} 38' 14''$ W, 230.25 feet;
4. Thence N. $85^{\circ} 38' 31''$ E, 168.65 feet;
5. Thence S. $4^{\circ} 38' 14''$ E, 200.10 feet;
6. Thence 47.27 feet along a curve concave to the northwest, with the following dimensions: Length of curve = 47.27 feet, radius = 30.00, central angle = $90^{\circ} 16' 45''$, length of long chord = 42.53 feet, and long chord direction = S. $40^{\circ} 30' 09''$ W, to the point of beginning.

Containing 38,634.5 square feet or 0.89 acre.

The Property is conveyed subject to the requirement Grantee use said Property for economic development purposes. If Grantee does not use the Property for said purpose within two years after the date this Quit Claim Deed is approved by the Office of the Attorney General or Grantee leases all or any portion of the Property, the Property shall revert to the state of Connecticut.

The Property is transferred together with and subject to such easements, restrictions and encumbrances as of record may appear, taxes on the list of October 1, 2012, and thereafter.

TO HAVE AND TO HOLD, the Property unto it, the Grantee, its successors and assigns, to the only use and behoof of it, its successors and assigns forever, so that neither it the Grantor, nor any person or persons in its name and behalf, shall or will hereafter claim or demand any right or title to the Property or any part thereof, but they and any one of them shall by these present be excluded and forever barred.

IN WITNESS WHEREOF, the said Grantor, acting herein by its said Treasurer, duly authorized, has hereunto set its hand this 13th day of September, 2013.

Signed in the presence of:

GRANTOR:

STATE OF CONNECTICUT

WITNESSES:

[Signature]
Name Catherine E. Lakhour

By: [Signature]

Denise L. Nappier
Its Treasurer
Duly Authorized

[Signature]
Name Shirley Williams

STATE OF CONNECTICUT)

ss. Hartford

9/13, 2013

COUNTY OF HARTFORD)

Before me, the undersigned officer, personally appeared, Denise L. Nappier, Treasurer, of the State of Connecticut, known to me to be the person described in the foregoing instrument, and acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained.

[Signature]
Commissioner of the Public Safety
Notary Public **MARIANNE M. DZIEDZIC**
NOTARY PUBLIC
MY COMMISSION EXPIRES APRIL 30, 2017

DEPARTMENT OF ADMINISTRATIVE SERVICES

STATE PROPERTIES REVIEW BOARD

By: [Signature]
Donald J. DeFrenzo
Its Commissioner
Date Signed: 9/5/13

By: [Signature]
Edwin S. Greenberg
Its Chairman
Date Signed: 9/19/2013

Approved:
Office of the Attorney General

By: [Signature]
Joseph Rubin
Its Associate Attorney General

Date signed: 10/7/13

EXHIBIT B

After recording, please return to:
Michael A. Carrier, Esq.
Weber and Carrier, LLP
24 Cedar Street
New Britain, CT 06052

QUITCLAIM DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That the **CITY OF NEW BRITAIN**, a municipal corporation organized and existing under the laws of the State of Connecticut, and having its territorial boundaries within the County of Hartford and State of Connecticut, acting herein by Erin E. Stewart, its Mayor, duly authorized, (hereinafter referred to as the "**Releasor**"), for the consideration of ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) DOLLARS received to its full satisfaction of **(a new Tomasso LLC to be formed) LLC**, a Delaware limited liability company having a place of business in the City of New Britain, County of Hartford and State of Connecticut (hereinafter referred to as the "**Releasee**"), do remise, release, and forever **QUITCLAIM** unto the said **Releasee**, its successors and assigns forever, all such right, title, interest, claim and demand whatsoever as the said **Releasor**, has or ought to have in and to a certain piece or parcel of land, together with all appurtenances thereto, situated in the Town of New Britain, County of Hartford and State of Connecticut, known as a 38,634 Square Foot or 0.89 acre portion of No. 10 FRANKLIN SQUARE as more particularly bounded and described in Schedule A attached hereto and made a part hereof.

Said Premises are conveyed subject to the taxes due the City of New Britain on the List of October 1, 2013, and thereafter, which taxes the **Releasee** herein agrees to pay as part consideration for this deed.

THIS DEED is made and executed upon, and is subject to certain express conditions and covenants, said conditions and covenants being a part of the consideration for the property hereby conveyed and are to be taken and construed as running with the land and the Releasee hereby binds itself, its successors and assigns, Releasees and lessees forever to these covenants and conditions, which covenants and conditions are as follows:

FIRST: The Releasee shall pay real estate taxes or assessments on the property hereby conveyed or any part thereof when due and shall not place thereon any encumbrances or lien other than for temporary and permanent financing of construction of the improvements on the property hereby conveyed and shall not suffer any levy or attachment to be made or any other encumbrances or lien to attach until the Releasor certifies that all building construction and other physical improvements specified to be done and made by the Releasee have been completed.

SECOND: The Releasee shall commence the construction of improvements for economic development purposes on the property hereby conveyed within five (5) years from the date of this Deed and shall complete such improvements within two (2) years from the commencement of such construction.

In case of the breach of covenant SECOND which breach shall not be cured, ended or remedied within six (6) months after written demand by the Releasor or any further extension thereof that may be granted by the Releasor in its sole discretion, then all estate conveyed under this Deed shall cease and terminate and title in fee simple to the same shall revert to and become revested fully and completely in it, and the said Releasor, its successors and assigns, shall be entitled to and may of right enter upon and take possession of the said property; provided that any such revesting of title to the Releasor:

- (1) Shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way the lien of any mortgage permitted by this Deed; and
- (2) In the event that title to the said property or part thereof shall revert in the Releasor in accordance with the provisions of this Deed, the Releasor shall, pursuant to its responsibilities under applicable law, use its best efforts to resell the property or part thereof (subject to such mortgage liens as hereinbefore set forth and provided) as soon and in such manner as the Releasor shall find feasible to a qualified and responsible party or parties (as determined by the Releasor) who will assume the obligation of making or completing the improvements or such other improvements in their stead as shall be satisfactory to the Releasor and in accordance with the uses specified for the above described property. Upon such resale of the property the proceeds thereof shall be applied:

First: to reimburse the Releasor, on its own behalf or on behalf of the City of New Britain for all costs and expenses incurred by the Releasor including, but not limited to, salaries of personnel in connection with the recapture, management and resale of the property or part thereof (but less any income derived by the Releasor from the property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the property or part thereof at the time of revesting of title thereto in the Releasor or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Releasee, its successors, or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the property or part thereof; and any amounts otherwise owing the Releasor by the Releasee and its successors or transferees; and

Second: to reimburse the Releasee, its successors or transferees up to an amount equal to the sum of the purchase price paid by it for the property (or allocable to the part thereof) and the cash actually invested by it in making any of the improvements on the property or part thereof, less any gains or income withdrawn or made by it from this conveyance or from the property; and

Third: any balance remaining after such reimbursements shall be retained by the Releasor.

The Releasor certifies that all conditions precedent to the valid execution and delivery of this Deed on its part have been complied with and that all things necessary to constitute this Deed is valid, binding and legal agreement on the terms and conditions for the purposes set forth herein have been done and performed and have happened, and that the execution and delivery of this Deed on its part have been and are in all respects authorized in accordance with law. The Releasee similarly certifies with reference to its acceptance of delivery of this Deed by his very acceptance of delivery. By his acceptance of delivery of this Deed, the Releasee hereby binds itself, its successors and assigns, Releasee and lessees to all of the covenants and conditions contained in this Deed.

TO HAVE AND TO HOLD the premises, with all the appurtenances, unto the said **Releasee** and its successors and assigns forever, so that neither the **Releasor**, nor its successors nor any other person under it or them shall hereafter have any claim, right or title in or to the premises, or any part thereof, but therefrom it and they are by these presents forever barred and excluded.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of _____, 2014.

Signed, Sealed and Delivered
in the Presence of:

CITY OF NEW BRITAIN

By: _____
Erin E. Stewart
Its Mayor, Duly Authorized

