



Greater Hartford Legal Aid

VIA U.S. AND ELECTRONIC MAIL

June 13, 2018

Commissioner Evonne M. Klein
Department of Housing
State of Connecticut
505 Hudson Street
Hartford, CT 06106
evonne.klein@ct.gov

RE: Petition for Declaratory Ruling
King Court State Family Moderate Rental
Development: 086-MR-23

Dear Commissioner Klein:

This is a Petition for a Declaratory Ruling to the Department of Housing (DOH) pursuant to Conn. Gen. Stat. § 4-176(a).¹ Petitioners are the King Court Residents Association and three of its officers, Mary Hill, Denise L. Lee, and Sharon Suzette Wright, who are tenants of King Court in East Hartford. Petitioners seek a declaratory ruling regarding the applicability to their specified circumstances of the agency's April 12, 2017 approval of a revision of the declaration of land use (Exhibit A). The amendment approved by the Commissioner in April 2017 removed 30 units from the State Moderate Rental Program at King Court.

Petitioners seek a declaratory ruling whether this was a valid amendment that conforms with the statutorily-required DOH decision issued October 23, 2013 (Exhibit B), following a public hearing pursuant to Conn. Gen. Stat. § 8-64a, approving the sale of King Court by the East Hartford Housing Authority. That DOH decision stated that 80 units would remain in the State Moderate Rental Program. Ultimately, Goodwin College King Court, LLC, purchased the property from the East Hartford Housing Authority in December, 2013, in a Purchase and Sale Agreement providing that 80 units would remain in the State Moderate Rental Program (Exhibit C). On July 31, 2014, King Court residents were sent a letter giving them the news that King Court was now owned by Goodwin College King Court, LLC. On September 18, 2014, Goodwin College King

¹The Department of Housing has not promulgated regulations that provide for: (1) the form and content of petitions for declaratory rulings; (2) the filing procedure for such petitions; and (3) the procedural rights of persons with respect to the petitions, as is required by Conn. Gen. Stat. § 4-176(b). The Petitioners therefore file this petition under the general authority of Conn. Gen. Stat. § 4-176.

Court, LLC, executed the Resident Participation Plan (Exhibit D) with the King Court Resident Association, again reiterating that 80 units would remain in the State Moderate Rental Program.

The threatened application of this amendment interferes with, impairs, and threatens to interfere with and impair, the petitioners' legal rights and privileges under Conn. Gen. Stat. § 8-64a; the October 2013 DOH decision approving the sale; and the amended Resident Participation Plan referenced in that decision. See Conn. Gen. Stat. §§ 4-175(a) and 4-176(a). No notice of this proposed amendment was given to the general public or to residents of King Court as required by Conn. Gen. Stat. § 8-64a. The King Court tenants and the King Court Residents Association did not receive notice of Goodwin College King Court LLC's proposed amendment to the declaration of land use removing 30 units from the State Moderate Rental Program before it was approved by the Commissioner and filed on the land records, nor was provision made for their rights and privileges, as required by Conn. Gen. Stat. § 4-181a(b).

Accordingly, Petitioners request a declaratory ruling regarding the following:

Whether the decision issued April 12, 2017 by Commissioner Klein amending the Declaration of Land Use associated with the Moderate Rental Housing project known as King Court, 086-MR-23, to reflect that the State Moderate Rental Program requirement applied to only 50 of the 80 units on the property, was a valid modification of the final DOH decision issued October 23, 2013 following public hearing in the matter of the proposed disposition of King Court, when: (1) the October 23, 2013 DOH decision pursuant to Conn. Gen. Stat. § 8-64a authorizing the sale ordered that 80 units would remain in the state family moderate rental program; (2) the Purchase and Sale Agreement through which Goodwin College King Court, LLC acquired the property from the East Hartford Housing Authority specified that the purchaser will maintain 80 units subject to the State Family Moderate Rental program guidelines; (3) the Resident Participation Plan required by § 8-64a and signed by Goodwin College King Court, LLC and the King Court Residents Association representatives on September 18, 2014 stated that 80 units would remain part of the moderate rental program; and (4) the Commissioner failed to notify the King Court Residents Association and King Court tenants and provide them with an opportunity to participate prior to modifying the 2013 decision, nor provided for their rights and privileges, as required by Conn. Gen. Stat. §§ 8-64a and 4-181a(b).

Factual & Procedural Background

In 2013, the East Hartford Housing Authority applied to the Department of Housing for permission to sell King Court. A public hearing was held pursuant to Conn. Gen. Stat. § 8-64a on May 8, 2013. At the public hearing, "King Court Disposition and

Redevelopment Resident Participation Plan,” was admitted, and tenants who were members of the King Court Residents Association testified.

The DOH decision states that King Court Residents Association had elected two members to participate in the RFQ Committee, which met several times in late 2012 and early 2013 to develop the RFQ. The DOH decision recites: “The RFQ provides, among other things, that the selected purchaser of King Court . . . would be required to (a) enter into an amendment to the Resident Participation Plan prior to the sale of King Court and (b) maintain **all 80 units** at King Court as affordable at or below 80% of AMI for a period of 40 years, in accordance with the rules of the State Moderate Rental Program” (Exhibit B at 8) (emphasis added) In its discussion of its findings, the DOH stated: “As set forth in the RFQ, the Housing Authority has specifically required that the selected purchaser maintain eighty residential units at King Court and that all such units remain affordable for a period of not less than forty years” (Exhibit B at 9)

The DOH acknowledged that 30 of the King Court units were not occupied at that time, but stated: “[t]he proposed disposition of King Court will leverage private funding for such redevelopment so that there will be no loss of affordable housing units and, in fact, as a practical matter there will be an increase of such units.” (Exhibit B at 11). The DOH noted that the East Hartford Housing Authority had developed its plan “in consultation with the residents of King Court . . . and made adequate provision for the participation of the residents of King Court,” and that “the RFQ expressly required that the Selected Purchaser maintain eighty residential units at King Court for a period of not less than forty years, during which period the units will continue to be subject to the State Moderate Rental Program guidelines” (Exhibit B at 12-13)

The DOH decision, proposed by the hearing officer and approved by the Commissioner, concluded with an order approving the sale and stating:

This Order is subject to the Housing Authority requiring the Selected Purchaser to rehabilitate or construct **at least eighty** residential units at King Court, maintain such units as affordable housing subject to the terms of the State Moderate Rental Program for not fewer than forty years, adopt an income-tiering structure consistent with the RFQ, execute an amendment to the Resident Participation Plan satisfactory to all parties thereto, and pay all amounts necessary so that any person who is displaced as a result of the disposition of King Court will be relocated to a comparable dwelling unit of public or subsidized housing in the Town of East Hartford or will receive a tenant-based subsidy and will receive relocation assistance under Chapter 135 of the CGS.

(Exhibit B at 14)(emphasis added).

The DOH Order concluded: “Should any of the facts or circumstances related to the disposition of King Court change, including, without limitation, the number of

affordable residential units to be maintained at King Court, the extent to which such units would be affordable, [or] the duration of such affordability . . . the Housing Authority must consult with DOH to determine if the change(s) will alter this decision.” (Exhibit B at 14)(emphasis in original).

The East Hartford Housing Authority and Goodwin College King Court, LLC subsequently entered a Purchase and Sale Agreement on December 18, 2013, which stated “Purchaser shall maintain 80 units as affordable to households earning at or below 80% Area Median Income for a period of 40 years. Purchaser further agrees that it will maintain 80 units subject to the State Family Moderate Rental program guidelines” (Exhibit C at 6)

On September 18, 2014, the King Court Residents Association executed a final version of the Resident Participation Plan with Goodwin College King Court, LLC, in fulfillment of the resident participation requirement of Conn. Gen. Stat. § 8-64a(3). (Exhibit D) The final version of the Resident Participation Plan states: “Under the terms of the State Moderate Rental Program and deed restrictions filed as a result of the sale of the property[,] Goodwin must, for forty years, maintain **eighty (80)** affordable housing units as defined by the State Moderate Rental Program.” (Exhibit D at 5) (emphasis added)

A little more than two years later, on December 23, 2016, the President of Goodwin College wrote to Commissioner Klein, stating that he had recently met with DOH staff and that, “[a]s a result of that meeting and discussion with your staff, it was determined that the State Moderate Rental Program applied to 50 of the 80 units on the Property at the time of the sale of the Property,” because “[a]t the time of the sale, 30 of the 80 units were vacant and were not available for rent because of their physical condition.” As a result, he requested an amendment to Schedule A of the “Declaration of Land Use Restrictive Covenants – Rental Housing for the King Court Housing Development MR23,” releasing 30 units from the restrictive covenant. (Exhibit E)

On April 12, 2017, the Commissioner responded to the President of Goodwin College and approved this amendment, stating “the Department agrees that a clarification of the Schedule A of the Assignment, Assumption and Modification of Assistance Agreement is necessary to accurately reflect the transaction envisioned as part of the acquisition of King Court by Goodwin College King Court, LLC.” The Commissioner authorized the filing of a Revised Declaration of Land Use Restrictive Covenant-Rental Housing, together with an amended Schedule A, removing 30 units from the State Moderate Rental Program, on the land records. (Exhibit A)

Goodwin’s request and the Commissioner’s response made no mention of any changed facts or circumstances at King Court or in the transaction. Indeed, both presented the issue as one of clarification, or correction of an error. The Commissioner’s letter regarding the amendment stated: “The Department agrees that a clarification of the Schedule A . . . is necessary to accurately reflect the transaction

envisioned as part of the acquisition of King Court by Goodwin College King Court LLC.” (Exhibit A)

The Commissioner failed to acknowledge that this amendment in fact constituted an alteration of the October 2013 DOH decision. That decision had stated no fewer than four times that the purchaser was ordered to maintain 80 units in the State Moderate Rental Program for no fewer than 40 years.

Although § 8-64a requires a public hearing, no notice was given to the general public. Nor were King Court tenants, the King Court Residents Association through its officers, or their GHLA counsel, who had advised the petitioners during the initial DOH approval of the sale and was named in the DOH decision, given notice of the amendment requested by Goodwin College King Court, LLC, despite the fact that § 8-64a expressly requires notice to tenants. No mention was made of petitioners’ legal rights and privileges; the legal significance of their statutorily-required participation in the RFQ process through their elected representatives (who had made a significant investment of their time in the process); nor their reliance on the Residence Participation Plan that had been so carefully negotiated over a period of years during the sale of the property originally approved by DOH.

Legal Authority

By statute, DOH was required to approve the sale of King Court by the East Hartford Housing Authority to Goodwin College King Court, LLC. Conn. Gen. Stat. § 8-64a provides in relevant part:²

No housing authority that receives or has received any state financial assistance may sell, lease, transfer or destroy, or contract to sell, lease, transfer or destroy, any housing project or portion thereof in any case where such project or portion thereof would no longer be available for the purpose of low or moderate income rental housing as a result of such sale, lease, transfer or destruction, except the Commissioner of Housing may grant written approval for the sale, lease, transfer or destruction of a housing project if the commissioner finds, after a public hearing, that (1) the sale, lease, transfer or destruction is in the best interest of the state and the municipality in which the project is located, (2) an adequate supply of low or moderate income rental housing exists in the municipality in which the project is located, **(3) the housing authority has developed a plan for the sale, lease, transfer or destruction of such project in consultation with the residents of such project and representatives of the municipality in which such project is situated and has made**

² Although Conn. Gen. Stat. § 8-64a has been amended a number of times since 2013, the only amendment that has affected this quoted language is a 2014 change from referring to a housing authority “which receives . . . any state financial assistance” to a housing authority “that receives . . . any state financial assistance”, in Public Act 14-49.

adequate provision for said residents' and representatives' participation in such plan, and (4) any person who is displaced as a result of the sale, lease, transfer or destruction will be relocated to a comparable dwelling unit of public or subsidized housing in the same municipality or will receive a tenant-based rental subsidy and will receive relocation assistance under chapter 135. (emphasis added).

Section 8-64a provides for a public hearing and specific factual findings, including a finding regarding a resident participation plan. The DOH October 2013 decision following public hearing, and the Resident Participation Plan executed with Goodwin College King Court, LLC, which was required by the DOH decision, both provided that 80 units would remain in the State Moderate Rental Program. The approval of the sale was contingent on DOH factual determinations. The DOH findings and order in October 2013 required that 80 units remain in the State Moderate Rental Program.

Section 8-64a also expressly requires notice to residents: "The commissioner shall give the residents of the housing project or portion thereof that is to be sold, leased, transferred or destroyed written notice of said public hearing by first class mail not less than ninety days before the date of the hearing." Section 4-181a(b) further provides that in the event of reconsideration or modification of a final agency decision, "The party or parties who were the subject of the original final decision, or their successors, if known, and intervenors in the original contested case, shall be notified of the proceeding and shall be given the opportunity to participate in the proceeding. Any decision to reverse or modify a final decision shall make provision for the rights or privileges of any person who has been shown to have relied on such final decision."

Although the residents of King Court had an opportunity to participate in the proceedings leading to the 2013 DOH decision, they had no notice of the amendment that Goodwin College King Court, LLC obtained from the Commissioner in April 2017, and no opportunity to be heard, or to respond to the representations made by Goodwin College King Court, LLC. This lack of notice and opportunity to be heard violated not only the applicable statutes, but also the due process protections of the fourteenth amendment to the United States Constitution and article first, §§ 8 and 10, of the Constitution of Connecticut.

Petitioners seek a declaratory ruling pursuant to Conn. Gen. Stat. § 4-176(a) regarding the validity of the April 2017 amendment authorized by the Commissioner and removing 30 units from the program. That section provides:

Any person may petition an agency, or an agency may on its own motion initiate a proceeding, for a declaratory ruling as to the validity of any regulation, or the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency.

Petitioners are tenants and officers of the King Court Residents Association, and the King Court Residents Association itself, whose statutorily-required Resident Participation Plan, referenced in the DOH approval of the sale of King Court to Goodwin College King Court, LLC, required that 80 units remain in the State Moderate Rental Program.

Petitioners request that the Commissioner take one of the actions listed in Conn. Gen. Stat. § 4-176 (e) in response to their petition for a declaratory ruling.

Petitioners thank the Commissioner for her attention to their request.

Respectfully submitted on behalf of:

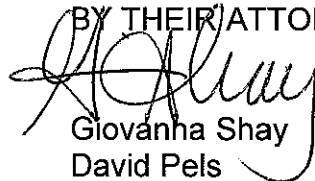
Mary Hill
Denise L. Lee
Sharon Suzette Wright,

KING COURT RESIDENTS AND
OFFICERS OF THE KING COURT
RESIDENTS ASSOCIATION

And on behalf of:

THE KING COURT RESIDENTS
ASSOCIATION

BY THEIR ATTORNEYS:



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