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Via Email and U.S. Mail

August 4, 2022

The Hon. Seila Mosquera-Bruno, Commissioner
Connecticut Department of Housing
505 Hudson Street
Hartford, CT 06106-7106

Michael Santoro, Director
Policy Research and Housing Support
505 Hudson Street
Hartford, CT 06106-7106

Re: Department of Housing Processing of § 8-30g Moratorium Applications

Dear Commissioner Mosquera-Bruno and Mr. Santoro:

As you know, in April 2022, I filed with the Department comments on the Town of Brookfield's then-pending § 8-30g moratorium application. In that letter, I was not representing any client, but speaking as an attorney who has been involved with General Statutes § 8-30g and its regulations since the Act's adoption in 1989. A copy of that letter is attached. The letter made three points: (1) moratorium applications must be supported by proof of annual, on-going compliance with maximum income and rent limits; (2) the statute clearly does not allow "holdover" or "carryover" points from one application to the next; and (3) General Statutes § 8-30g(1)(4)(B) requires the Department to provide reasons for its actions on a moratorium application. You will recall that I and others made these arguments in applications prior to Brookfield's, such as Westport's.

In approving the Brookfield application by letter dated June 2, 2022, copy attached, the Department approved an application that was not accompanied by ongoing/annual compliance information; and relied on holdover/carryover points. However, the approval letter says nothing in response to the specific issues raised in the comment letter. Also, the Department did not even provide my office with a copy of the approval; we learned about it and obtained a copy after seeing the publication of the approval.

The issues regarding proof of ongoing compliance and carryover points are important statewide concerns and are not going away; affordable housing advocates, statewide, need to understand the Department's reasons for rejecting the comments on these issues. General Statutes § 8-30g(1)(9)(B) requires the Department to provide "a written statement of the reasons for approval or rejection," which would appear to encompass a contested legal issue regarding eligibility for points. I therefore request, at the Department's earliest opportunity, a written

The Hon. Seila Mosquera-Bruno, Commissioner
Michael Santoro, Director
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explanation as to the basis for rejecting the comments made with respect to the Brookfield application.

Thank you for your attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tim Hollister".

Timothy S. Hollister

TSH:kcs

Enclosure

cc: Attorney General William Tong (via email)
Deputy Attorney General Clare Kindall (via email)
Attorney Raphael Podolsky (via email)
Attorney Anika Singh Lemar (via email)
Sean Ghio, Partnership for Strong Communities (via email)



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April 8, 2022

The Hon. Seila Mosquera-Bruno, Commissioner
Connecticut Department of Housing
505 Hudson Street
Hartford, CT 06106-7106

Michael Santoro, Director
Policy Research and Housing Support
505 Hudson Street
Hartford, CT 06106-7106

Re: Comment on Resubmitted Application of the Town of Brookfield for Certificate of Affordable Housing Completion/Moratorium

Dear Commissioner Mosquera-Bruno and Mr. Santoro:

I am writing to comment on the Town of Brookfield's pending application for a § 8-30g moratorium.

In writing today, I am not representing any client or organization; I have no pending or potential development work in Brookfield; and in general, I support the Department's granting of properly documented moratorium applications. I write today primarily for two reasons: I helped write the moratorium regulations, under contract to the Department, in 2002; and I regularly consult with housing advocates and advocacy organizations that, among other roles, have taken on the responsibility of reviewing 8-30g moratorium applications for regulatory compliance. In preparing this letter, I have consulted with several advocates and organizations, including Attorney Podolsky.

In summary, the Brookfield application consists of points calculations for the Brookfield Village, Carlin's Way, Mill River, Orchard Place, and two single units, plus 40.25 "holdover" points from the town's 2017 moratorium. As occurred in 2021, the application is incomplete in at least one significant respect, and it is the same issue as was raised in 2019-2021 in declaratory ruling/declaratory judgment actions involving the 2019 moratorium issued to Westport: A failure to file with the application evidence of annual, ongoing compliance with the Affordability Plans for the developments for which Housing Unit Equivalent points are claimed. There are no § 8-30h annual compliance reports for the set-aside housing points claimed, or equivalent reports for assisted housing, in the application. In addition, § 8-30g does not allow "holdover" points.

The § 8-30g Moratorium Process

In 2000, the General Assembly adopted the moratorium process, which grants a town "housing unit equivalent" ("HUE") points when it issues certificates of occupancy – not simply zoning approval – for units that either qualify as "assisted housing" (built with financial help from a government housing program) or a "set aside development," in which at least 30 percent of the units will be preserved for 40 years or more for low and moderate income households. *See* General Statutes § 8-30g(l)(4)(A). If a town obtains sufficient HUE points, it may apply to DOH for a Certificate of Affordable Housing Completion, which may grant the town a moratorium from § 8-30g's burden-shifting standard for four years. *See* General Statutes § 8-30g(l)(1).

Section 8-30g includes a number of requirements for an application for a Certificate of Affordability. *See* General Statutes § 8-30g(l)(4)(B). These requirements include: (a) a complete application that allows DOH and the public to understand and verify all point total claims; (b) evidence of compliance with notice requirements; (c) public disclosure of all parts of the town's application, to allow for public comment; and (d) evidence not only of § 8-30g intended compliance at the time the development is granted zoning approval or issued certificates of occupancy, but evidence of *on-going compliance during residential occupancy* with maximum household income and maximum rent or sales prices, continuing to the time of the Certificate application to the DOH.

The Connecticut regulations impose additional requirements upon an application, including: a letter from the town attorney opining that the application complies with state law "as in effect on the day the application is submitted," § 8-30g-6(c)(2); certification that certificates of occupancy for claimed units are "currently in effect," § 8-30g-6(c)(6); certification that a town has not claimed HUE points for any developments that no longer meet the necessary affordability requirements, § 8-30g-6(c)(7); and a § 8-30h compliance report if a development is less than one year old, § 8-30g-6(f)(3).

DOH Cannot Grant The Moratorium Because Brookfield Has Not Submitted Evidence Of On-Going Affordability Compliance Required To Receive Moratorium Points

Section 8-30g(l)(4)(A) provides that DOH shall issue a Certificate of Affordability "upon finding that there has been completed within the municipality one or more affordable housing developments which create [HUE] points equal to" the requisite statutory standard. Section 8-30g(a)(1) then defines "Affordable housing development" as "a proposed housing development which is (A) assisted housing, or (B) a set-aside development."

By definition, a "set-aside development" is a housing development in which (a) at least 15 percent of the dwelling units must be sold or rented at or below prices at or below 30 percent of the 80th percentile of the lesser of the state or area median income and (b) at least 15 percent of the dwelling units are sold or rented at or below prices at or below 30 percent of the 60th percentile of the lesser of the state or area median income. General Statutes § 8-30g(a)(6).

Critically, *set-aside developments must maintain these restrictions "for at least forty years after the initial occupation of the proposed development" to be compliant with the statute* (emphasis added).¹

Numerous statutory and regulatory provisions demand continuing compliance with affordability plan oversight, administration, and enforcement obligations. Most important, General Statutes § 8-30h mandates that owners of affordable housing developments containing rental units "provide annual certification to the commission that the development *continues to be in compliance* with the covenants and deed restrictions required under" § 8-30g. The requirement is mandatory, and failure to certify would put the development out of compliance with § 8-30g. Section 8-30h provides the municipality with the right to "inspect the income statements of the tenants of the restricted units" so as to verify the development's continuing compliance. This statute also includes a mandatory corrective requirement if a development is out of compliance – rental of the next available unit to an income-eligible household "until the development is in compliance." Section 8-30h thereby assures both that the municipality has the capacity to identify continuing compliance and to confirm that "the development is in compliance." The municipality, therefore, has an oversight obligation. More importantly, *the failure of the development to comply with 8-30h would put the development out of compliance with the requirements for an "affordable housing development," and would necessarily preclude the municipality from counting that development in an application for a moratorium.* To obtain a moratorium, the burden is on the municipality to prove that developments are compliant. This is a burden which it can easily meet by assuring that annual certifications are filed and, if necessary, verifying their accuracy. *Thus, the failure to include proof of continuing eligibility precludes the counting of such units to establish eligibility for a moratorium.*

Numerous other provisions of § 8-30g and the related regulations confirm that continued compliance is required and must be documented. First, Regulations § 8-30g-6(c)(2) requires a letter from the town attorney opining that the application complies with state law "as in effect on the day the application is submitted." This provision clearly requires evidence that § 8-30h annual reports have been filed and verified. Second, Regulations § 8-30g-6(c)(6) requires certification that certificates of occupancy for claimed units are "currently in effect," which also requires evidence of on-going compliance since occupancy, not just at a past point in time. Third, Regulations § 8-30g-6(c)(7) instructs that a municipality, when applying for an § 8-30g moratorium, must certify that it "has identified and deducted, or otherwise excluded from the total [HUE] points claimed, all units that as a result of action by the municipality, municipal housing authority, or municipal agency, no longer qualify, as of the date of submission of the application, as providing [HUE] points." This too implies a look back and enforcement. Fourth, Regulations § 8-30g-6(f)(3) requires, as one way to provide evidence of currently enforceable affordability obligations, a § 8-30h compliance report if developments are less than one year old."

¹ We recognize that developments approved before 2000 may have affordability terms of less than 40 years, although several of such terms have now expired.

As but one example of Brookfield's incomplete application, the pending application for Mill River claims points for units that are condominiums *but without any sales price calculation using the § 8-30g formula or evidence of compliance in the actual sale.*

In this case, Brookfield has provided no evidence of on-going compliance with affordability restrictions for the developments for which it claims points. The necessary documentation should be on file with the Town, readily available, and filed as part of the application. Until that occurs, the application is incomplete.

Section 8-30g Does Not Allow “Holdover” Points

Section 8-30g is clear that there is no such thing as “holdover” points from a prior application. They are not allowed by § 8-30g, and they are contrary to the purpose of the moratorium.

C.G.S. § 8-30g(l)(3) states that “Eligible units completed *after a moratorium has begun* may be counted toward establishing eligibility for a subsequent moratorium” (emphasis added). The phrase “after a moratorium has begun” is a limiting phrase that would be entirely unnecessary if units completed before a moratorium has begun could count toward a subsequent moratorium – the phrase would be entirely redundant. The text of § 8-30g makes clear that, except for use of post-1990 points in a first moratorium application, moratorium points for a second or subsequent moratorium must be generated by development or equivalent activity that is completed only *after* the prior moratorium has started.

This requirement is consistent with the purpose of a second moratorium, which is to give relief to non-exempt towns that have continued to promote affordable housing construction *during and after a moratorium*, and to give relief from a high level of on-going active affordable housing development. This danger is actually evidenced in this application. In discussing “reserved” points for Towne Brooks Commons, the applicant states that Brookfield reserved points “for future applications,” in the plural. It apparently believes it could distribute these points from past development out as needed in future years to obtain additional moratoriums without having to generate sufficient new housing to satisfy 8-30g’s minimum requirement for new development. The moratorium process was never intended to allow a non-exempt town to obtain a moratorium for the purpose of blocking future affordable housing development. Indeed, if “holdover” points were permitted, a one-time single large development could be used by a non-exempt town to prevent any additional affordable housing development for years, beyond the four-year moratorium period. The prohibition on “holdover” points also explains why § 8-30g(l)(7) allows towns to count affordable units built after 1990 under the then-existing § 8-30g standard. It was certainly not so that non-exempt towns could use construction in the 1990s at the 80 percent-20 percent/20-year standard to obtain extended moratoria beyond an initial moratorium. To the contrary, that was always intended to be for a first moratorium only, so that towns that had development in the 1990s, when § 8-30g had no moratorium provision, would not

The Hon. Seila Mosquera-Bruno, Commissioner
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be left out. Once a town achieves a first moratorium, however, new moratoria require new affordable development.

The application's holdover points should not be credited. Without these points, the application sells short of its requirement.

Mill River Is Not A "Set Aside" Development

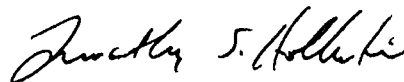
The application states that 30 percent of the 22 units are deed restricted at 80 percent of the statewide median income. This does not meet the requirement for an "affordable housing development" under C.G.S. § 8-30g(l)(7), which allows points only for a set-aside development or assisted housing as defined in the statute. The Affordability Plan was approved in 2003, when units at 60 percent of median income were required. There are no 60 percent units. The points claimed for Mill River are incorrect.

The Department Must Give Reasons

The moratorium statute, § 8-30g(l)(4)(B), requires the Department to provide reasons for its actions. We submitted the objections that are restated here in our July 29, 2021 letter. Those objections were not accepted in the Department's November 2021 decision, but no reason was given by the Department for rejecting them. We respectfully request the Department's specific written response to objections explained in this letter, which are matters of statewide concern and for the Department's ongoing administration of a remedial statute.

Thank you for your consideration.

Very truly yours,



Timothy S. Hollister

TSH:kcs

Enclosure

cc: Patricia Sullivan, Esq.
Raphael Podolsky, Esq.



Ned Lamont
Governor

STATE OF CONNECTICUT
DEPARTMENT OF HOUSING



Seila Mosquera-Bruno
Commissioner

June 2, 2022

Ms. Tara Carr
First Selectman
Town of Brookfield
100 Pocono Road
Brookfield, CT 06804

RE: Certificate of Affordable Housing
Moratorium Application under Section 8-30g CGS

Dear First Selectman Carr:

In accordance with Section 8-30g of the Connecticut General Statutes and the applicable Regulations of Connecticut State Agencies under Sections 8-30g-1 through 8-30g-11, inclusive, the Department of Housing ("DOH") has reviewed the March 10, 2022 request for issuance of a Certificate of Affordable Housing, pursuant to receipt of a Moratorium of Applicability.

In accordance with those regulations, a notice of receipt of a Completed Application was published in the Connecticut Law Journal initiating a 30-day period whereby DOH sought public review and input into this application. Comments were received during this time period from Connecticut Legal Services and Hinkley Allen, and were taken into consideration.

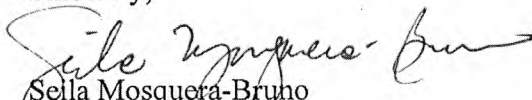
DOH staff has reviewed the materials provided, and has determined that the Town of Brookfield does meet the requirements for receipt of a Certificate of Affordable Housing Project Completion as submitted.

A copy of the DOH HUE review is attached for your reference.

As a result of these findings, I have ordered the publication of a Notice of Issuance of a State Certificate of Affordable Housing on the next publication date of the Connecticut Law Journal. This entitles the Town of Brookfield to a Moratorium of Applicability commencing on the date of publication. Under the law, this Moratorium of Applicability shall remain in force and effect for a four year period unless earlier revoked in accordance with the law.

I would like to take this opportunity to thank you and the Town of Brookfield for continuing to address the affordable housing needs in your community. Should you or your staff have any questions with regard to this notification, please do not hesitate to contact Michael Santoro by email at Michael.Santoro@ct.gov or Laura Watson at Laura.Watson@ct.gov.

Sincerely,


Seila Mosquera-Bruno
Commissioner



STATE OF CONNECTICUT
DEPARTMENT OF HOUSING



To: The File

From: Laura Watson, Economic and Community Development Agent

Date: June 2, 2022

RE: Brookfield Moratorium Application: Receipt date of March 10, 2022 (Published in Law Journal March 22, 2022; June 8, 2022 is the 90-day due date)

Calculation of Housing Unit Equivalent (HUE) Points

Restriction:

25% AMI= \$134,700 AMI
X 0.25
\$33,675

50% AMI= \$134,700 AMI
X 0.50
\$ 67,350

60% AMI= \$134,700 AMI
X 0.60
\$ 80,820

80% AMI= 134,700 AMI
X 0.80
\$107,760

HUE's	80% SMI	80% of \$112,600 = \$90,080
	60% SMI	60% of \$112,600 = \$67,560
	40% SMI	40% of \$112,600 = \$45,040

Under Connecticut General Statutes ("CGS") Section 8-30g(l)(7), HUEs are awarded for dwelling units which were (A) newly-constructed units in an affordable housing development, as that term was defined at the time of the affordable housing application, for which a certificate of occupancy was issued after July 1, 1990, or (B) newly subjected after July 1, 1990, to deeds containing covenants or restrictions which require that, for at least the duration required by subsection (a) of this section for set-aside developments on the date when such covenants or restrictions took effect, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as affordable housing for persons or families whose income does not exceed eighty percent of median income.

Prior to Public Act 95-280, 20% of the dwelling units in an Affordable Housing Development had to be deed restricted and remain affordable for at least 20 years.

The definition of a Set-aside Development did not exist prior to June 1, 2000, but the interpretation is that any project which would have been eligible to use CGS 8-30g under the definition at the time it was originally proposed should be considered a Set-aside Development, and treated as such. For projects where the application for such development was filed after July 6, 1995, the Set-aside Development (which adheres to Public Act 95-280) shall be awarded .25 points per each market rate unit (as indicated in Public Act 00-206). For projects where the application was filed before July 6, 1995 (and after July 1, 1990), a Set-aside Development containing family units which are rental units shall be awarded additional points equal to twenty-two percent of the total points awarded to such development.

Public Act 95-280 (for applications received on or after July 6, 1995) defines "Affordable Housing Development" as a proposed housing development (A) which is assisted housing or (B) in which not less than 25% of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that such dwelling units be sold or rented at, or below, prices which will preserve the units as affordable housing, as defined in CGS 8-39a, for persons and families whose income is less than or equal to 80% of the area median income or 80% of the state median income, whichever is less, for at least thirty years after the initial occupation of the proposed development.

Public Act 99-261 (which took effect on June 29, 1999) states "Affordable Housing Development" means a proposed housing development (A) which is assisted housing or (B) in which not less than 25% of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least thirty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at or below, prices which will preserve the units as affordable housing. Of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than ten percent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty percent of the area median income or sixty percent of the state median income, whichever is less, and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty percent of the area median income or eighty percent of the state median income, whichever is less."

Public Act 00-206 (As of June 1, 2000) "Set-aside Development" means a development in which not less than thirty percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling

units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to eighty percent of the median income. In a Set-aside Development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than 15% of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to 60% of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons/families whose income is less than or equal to 80% median income.

Brookfield Village

800 Federal Road and 7 Station Road – Extended Low-Income Housing Commitment (Book 719 Page: 799 File Number: 03158 Page: 1 -12)

48 Total Rental Family Units (one and two bedroom units indicated by DeMarco Management Corporation, March 15, 2021 email)

43 Affordable Rental Family Units
5 Market Rate Rental Family Units

$48 * .30 = 14.4$ or 15 affordable units

$48 * .15 = 7.2$ or 8 affordable units at 60% of SMI (meets the "lesser of" test)

As indicated in Public Act 00-206, "Set-aside Development" means a development in which not less than thirty percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to eighty percent of the median income. In a Set-aside Development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than 15% of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to 60% of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons/families whose income is less than or equal to 80% median income. DeMarco's letter indicates they are using AMI, but we need to use SMI because the "lessor of" test applies. Therefore, AMI was converted into SMI and applied to the appropriate income categories. Our review indicates that this development meets the definition of a set-aside development and the market rate units may receive .25 points each.

28 rental family units @ 60% AMI (per DeMarco Mgt. Corp.) = HUE @ 80% SMI = 1.50 points each
28 units @ 1.50 points = 42 points

12 rental family units @ 50% AMI (per DeMarco Mgt. Corp.) = HUE @ 60% SMI = 2 points each
12 units @ 2 points = 24 points

3 rental family units @ 25% AMI (per DeMarco Mgt. Corp.) = HUE @ 40% SMI = 2.50 points each
3 units @ 2.50 points = 7.50 points

5 market rate set-aside units = HUE @ .25 point each
5 units @ .25 point = 1.25 point

42 points + 24 points + 7.5 points + .75 points = **74.75 points total**

Carlin's Way

1 and 3 Carlin's Way

5 Total Family Units owner occupied
2 Affordable Family Units owner occupied
3 Market Rate Units owner occupied

5*.30 = 1.5 or 2 affordable units
5 units – 2 affordable units = 3 market rate units

Affordable Units
5*.15 = .75 or at least 1 unit at 60%

Our review indicates that this project meets the "lessor of" test and will utilize the 2022 state median income of \$112,600. As indicated in the Statutory Warranty Deeds, 1 Carlin's Way (July 2, 2008, Volume 587, Pg. 263-265) and 3 Carlin's Way (December 13, 2007, Volume 578, Pg. 798-800) were conveyed specifically subject to the provisions of the affordability plan on file with the Town of Brookfield (August 2, 2007, Volume 570, Pg. 938-963). As indicated in both deeds, the dwelling units are affordable housing dwelling units within a set aside development as defined in CGS 8-30g and in accordance with applicable Regulations of Connecticut State Agencies that were in effect on the date of the original application for initial local approval on July 24, 2007. By way of summary, the affordability plan calls for thirty percent (30%) of the homes to be designated as "Housing Opportunity Units" that will meet the criteria for "affordable housing" as defined in CGS 8-30g. As amended by the legislature effective October 1, 2000, CGS 8-30g requires that for this application fifteen percent (15%) of the units must be affordable for 40 years to families earning eighty percent (80%) or less of the median income for the greater Danbury area or the State median income, whichever is less, and at least fifteen percent (15%) of the units must be affordable to those earning sixty percent (60%) or less of either the area or State median income, whichever is less. This development meets the definition of an affordable housing development.

2 owner occupied family unit @ 60% SMI (per deed restrictions)= HUE @ 60% SMI = 1.50 point each
2 units @ 1.50 point = **3 points**

3 market rate set-aside units = HUE @ .25 point each
3 units @ .25 point = **.75 points**

3 points + .75 points = **3.75 points total**

Hollow Drive

12 Homes with 4 Affordable; only 1 Affordable Unit completed at time of this application – 4 Hollow Drive

12 Total Family Units owner occupied
4 Affordable Family Units owner occupied
8 Market Rate Units owner occupied

$12 \times .30 = 3.6$ or 4 affordable units
 $12 \text{ units} - 4 \text{ affordable units} = 8 \text{ market rate units}$

Affordable Units

$12 \times .15 = 1.8$ or at least 2 units at 60%

Our review indicates that this project meets the “lessor of” test and will utilize the 2022 state median income of \$112,600. 4 Hollow Drive is a three-bedroom owner-occupied unit restricted to 60% of state Median Income for a period of 40 years. As indicated in the Statutory Warranty Deed, 4 Hollow Drive (August 1, 2019, Volume 757, Pg. 351) is conveyed specifically subject to the provisions of the affordability plan as on file with the Town of Brookfield (Volume 713, Pg. 657). As indicated in the deed for 4 Hollow Drive, this dwelling unit is an affordable housing dwelling unit within a set aside development as defined in CGS 8-30g and in accordance with applicable regulations. As amended by the legislature effective October 1, 2000, CGS 8-30g requires that to be considered a set-aside development, fifteen percent (15%) of the units must be affordable for 40 years to families earning eighty percent (80%) or less of the median income for the statistical area or the State median income, whichever is less, and at least fifteen percent (15%) of the units must be affordable to those earning sixty percent (60%) or less of either the area or State median income, whichever is less. Therefore, at a point later in time, this development may meet the definition of an affordable housing development upon confirmation of income when the units are complete. This would allow market rate set-aside units for HUE @ .25 point each for affordable units to be eligible to be claimed in a later application. Because the only unit complete to date is 4 Hollow Drive, the following points will apply:

1 owner occupied family unit @ 60% SMI (per deed restriction)= HUE @ 60% SMI = 1.50 point
1 units@ 1.50 point = **1.50 points**

139 Tower Road

Our review indicates that this project meets the “lessor of” test and will utilize the 2022 state median income of \$112,600. As indicated in the Statutory Warranty Deed (November 26, 2008, Volume 593, Pg. 0001), 139 Tower Road was conveyed as an “affordable housing unit” as defined in CGS 8-30g and the owner of 139 Tower Road shall sell or transfer said property only to certain eligible families or households as specified in CGS 8-30g as amended by Public Act 99-261. Applicable income limits shall be determined by the Connecticut Department of Housing and the U.S. Department of Housing Urban Development (“HUD”) and conveyed specifically subject to the provisions of the affordability plan as on file with the Town of Brookfield. As indicated in the deed for 139 Tower Road, this dwelling unit is two-bedroom owner occupied affordable housing dwelling unit at 80% of area or statewide median income, for a period of 40 years.

1 owner occupied family unit @ 80% SMI (per deed restriction)= HUE @ 80% SMI = 1.00 point
1 units@ 1.00 point = **1.00 point**

Mill River

22 Total Family Units owner occupied
7 Affordable Family Units owner occupied
15 Market Rate Units owner occupied

$22 \times .30 = 6.6$ or 7 affordable units
22 units – 7 affordable units = 15 market rate owner occupied units

Our review indicates that this project meets the “lessor of” test and will utilize the 2022 state median income of \$112,600. As indicated in the Affordability Plan (June 15, 2005, Volume 0514, Pages 0688-0707), referenced by individual deed, thirty percent (30%) of the homes in the Condominium will be designated as “Housing Opportunity Units” that will be the criteria for “affordable housing” as defined in CGS 8-30g, as amended to date. At least 30% of the units in the Condominium must be affordable for forty (40) years for families earning eighty percent (80%) or less of the median income for the Brookfield area (Danbury PMSA) or the State median income, whichever is less. This property is not a set-aside development as there are no properties at 60% median income.

7 owner occupied family unit @ 80% SMI (per deed restriction)= HUE @ 80% SMI =1 point
7 units @ 1.00 point = **7.00 points**

20 Orchard Place

30 Total rental age restricted units
9 Affordable rental age restricted units
21 Market rate rental age restricted units

$30 \times .30 = 9$ Affordable rental age restricted units
30 units – 9 affordable units = 21 market rate rental age restricted units

Our review indicates that this project meets the “lessor of” test and will utilize the 2022 state median income of \$112,600. As indicated in the Deed Restriction (June 15, 2005, Volume 0556, Pages 0757-0758), thirty percent (30%) of the dwelling units of Orchard Place Apartments will be designated as “Affordable Units” that will meet the criteria for “affordable housing” as defined in CGS 8-30g and 8-39a. In addition these units defined as “affordable” will be deed restricted as “active adult” requiring that tenants’ age will be restricted to 55 years or older. All “Designated Age Restricted” units will be occupied by tenants who meet the affordable housing requirements as defined by CGS 8-30g and 8-30a. The income restriction will be at 80% of State median income and will run with the land for a period of 40 years.

9 rental elderly units @ 80% SMI (per deed restriction)= HUE @ 80% SMI = .50 point
9 units @ .50 point = **4.50 points**

Town Brooke Commons

102-unit set-aside development was filed with the Brookfield Zoning Commission on September 29, 2000 (Public Act No. 99-261) Project qualifies for HUE's as 25% for 30 years – of the dwelling units conveyed by deeds containing covenants or restrictions, a number not less than 10% of all dwelling units in the development (11 units) shall be sold or rented to persons and families whose income is less than or equal to sixty per cent of the area median income or sixty percent of the state median income , whichever is less, and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions (15) shall be sold or rented to persons and families whose income is less than or equal to eighty percent of the area median income or eighty percent of the state median income, whichever is less. See PA 00-206, which requires looking at the project at the time the project was originally proposed; "the lesser of test" as per PA 95-280 (effective July 6,1995) did exist when the project was first proposed and should be applied relative to consideration for calculating HUE points. Along these same lines, the definition of a set-aside development did not exist prior to June 1, 2000, but the interpretation is that any project which would have been eligible to use CGS 8-30g under the definition at the time it was originally proposed should be considered a set-aside development, and treated as such. (set-aside developments containing family units which are rental units shall be awarded .22 of the total points awarded to such development, provided the application for such development was filed with the commission prior to July 6, 1995).

Therefore, the project should receive points for the market rate units in accordance with those detailed in 8-30g (l)(6) and should receive the 0.25 points per market rate unit, however is not eligible for the bonus of twenty-two percent times the total points awarded.

Total number of units = 102

$102 * .25 = 25.5 = 26$ **Affordable Units total**

$102 - 26 = 76$ **Market Rate Units**

Of the 26 Affordable Units:

$102 * .10 = 10.2 = 11$ **units at 60% SMI**

$26 \text{ units} - 11 \text{ units} = 15$ **units at 80% of SMI**

Unit breakdown:

76 rented market rate units = HUE @.25 pts each

76 units @ .25 pts = **19 pts**

15 family rented units @ 80% SMI = HUE @ 1.5 pts each

15 units @ 1.5 pts = **22.5 pts**

11 family rented units at 60% SMI = HUE @2.0 pts each

11 units @ 2 pts = **22 pts**

Total HUE pts Available for this development: 63.50 pts

Total HUE pts claimed May 10, 2017 application: 23.25 pts

Total Remaining HUE pts claimed this application: 40.25

*Holdover
points*
*no
excess
complain!*

Bonus Housing Unit – Equivalent Points

- Family units, owned or rented containing three or more bedrooms (.25 per unit)- Tax Assessors records indicate 3 in these affordable single-family owner occupied units:
 - 1 Carlin's Way @ .25 bonus point = .25 bonus point
 - 3 Carlin's Way @ .25 bonus point = .25 bonus point
 - 4 Hollow Drive @ .25 bonus point = .25 bonus point
- Family units within an approved Incentive Housing Development (.25 per unit) -
 - 43 affordable rental family units at Brookfield Village @ .25 Bonus point = 10.75 bonus points
- If at least 60% of the total Affordable units above are Family units, then each Elderly unit receives .5 per unit – 60% of the total Affordable units above were Family units.

SUMMARY:

PROJECT NAME	HUE POINTS
Brookfield Village	74.75
Carlin's Way	3.75
Hollow Drive	1.50
139 Tower Road	1.00
Mill River	7.00
20 Orchard Place	4.50
Town Brooke Commons	40.25
Bonus 3 Bedroom	.75
Bonus Incentive Housing Development	10.75
Bonus Elderly	4.50
Total	148.75

Brookfield needs at least 131.24 HUES ($2\% * 6,562 = 131.24$ points to be eligible), therefore Brookfield is eligible based on HUE's.