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Seila Mosquera-Bruno, Commissioner
Department of Housing
505 Hudson St.
Hartford, CT 06106-7106

Email: CT.HOUSING.PLANNING@ct.gov

Re: 8-30g application of the Town of Orange

Dear Commissioner Mosquera-Bruno:

I write to comment on the application of the Town of Orange for a moratorium under C.G.S. 8-30g. We have a number of concerns about the application, and I want to call them to your attention.

Holdover points:

- There is an oddity in the town's application, because it does not identify which units it is claiming for HUE points in regard to this moratorium application. The application states that the town is claiming 109.6 points toward this application and that it "reserves the remaining 236.80 qualifying HUE points for future applications." It does not, however, indicate which of its alleged 346.40 points are to be applied to this application. The implication is that the Department should review them all and pre-clear them for the next eight years. It would be impossible for the Department to do this, however, since it is impossible to know whether any specific unit will be eligible at the time that a second or third moratorium is applied for. For example, a unit could have been demolished or destroyed by fire, or the developer or subsequent purchaser may have found a way to invalidate the income or rent restrictions, or the law of how to count moratorium points may have changed. The units can be qualified by the Department only for this application for this four-year moratorium; and no qualification should be made for any unit that is not being counted toward this moratorium. The town is presumably relying on Section 22 of P.A. 24-143 for its claim to reserve points for a future subsequent moratorium; but that section is not relevant to this application at all, because this application is for a first moratorium only. In addition, this application was filed prior to the effective date of Section 22, which did not take effect until June 6, 2024, when the Governor signed P.A. 24-143. The result is that the Department can, as part of this application, qualify only units to which this application applies.

- We also do not agree that, under Section 22, unlimited points can be reserved for future moratoria in this way. That matter, however, is not before the Commissioner at this

time; and its discussion should therefore be reserved for a future application that properly raises the issue.

Determination of unit eligibility:

We have increasingly become concerned that some developments presented as 8-30g-eligible are not in fact being managed so as to maintain eligibility. The statute anticipates that towns will make sure that 8-30g affordability requirements are being complied with. The application for a moratorium is a critical checkpoint at which the town *must* assure that any development claimed for points is maintaining the affordability requirements of the statute and is therefore eligible to be counted for that purpose. The Department is not authorized to award HUE points for non-compliant developments, and it should require towns to provide adequate documentation of compliance. There are at least two areas in which we have specific concerns, one of which is particularly important in regard to this application:

- Determination of maximum rents

    - Under 8-30g, the maximum rent must be set so that the "housing cost" of the tenant will not exceed 30% of the income of a tenant at the 60% or 80% of median income level. The housing cost for renters is not the contract rent but rather the cost of the housing to the tenant. The maximum contract rent must be adjusted downward if heat or any utilities are to be paid by the tenant. See RCSA 8-30g(d)(9). This use of full "housing" cost was drawn from federal programs, such as the Housing Choice Voucher program (Section 8) and was incorporated into the 8-30g regulations. We believe that some (perhaps many) developers have failed to make this downward adjustment in calculating rents and that such failures result in systematic rent overcharges to tenants in affordable units. Housing in which rents are set too high puts the housing out of compliance with C.G.S. 8-30g. Parallel concerns exist as to ownership housing in regard to monthly charges and resale prices. See RCSA 8-30g(b)(6) and RCSA 8-30g(a).
    - Such violations are, in the first instance, violations by the developer. C.G.S. 8-30h, however, provides a specific municipal enforcement mechanism in regard to 8-30g rental developments. That statute requires the owners of such properties to annually certify compliance with covenants and deed restrictions to the town's zoning commission. The statute explicitly authorizes the commission to inspect income statements from the tenants to verify property owner compliance. This mandatory certification, however, is not limited to income eligibility but more broadly covers compliance with all "covenants and restrictions," and therefore includes the calculation of rents. This requirement puts an obligation on the town to use its review powers to assure that rent formulas used by the developer are consistent with the statute and the regulations and are being properly applied. A town's application for a moratorium is an appropriate time is an appropriate time to verify these

requirements, since RCSA 8-30g-6(f) requires that each unit claimed "shall be documented as an enforceable obligation with respect to both income qualifications and maximum housing payments, that is binding at the time of application" for a moratorium. In other words, for the town to apply for a moratorium, it must confirm and certify that the tenant rent calculation formulas are consistent with the statute and regulations and being correctly calculated. Moratorium points cannot be given for units that are out of compliance with 8-30g.

- AMI v. SMI: Since July 6, 1995, when P.A. 95-280 took effect, median income calculations under 8-30g must be based on the lower of state or median income. The application cover letter from Atty. Marino, dated April 29, 2024, does not make this distinction and describes income restrictions as being based on AMI. It is possible that the reference to AMI is a misstatement of the actual text of the deeds, which may in fact be based on the lesser of AMI and SMI. This could jeopardize the eligibility for HUE points of any development on the basis that the documents are non-compliant or that the resulting income levels produce a miscounting of residents eligible for restricted units. In this particular case, however, it would not have the latter impact. A review of HUD data reveals that, because Orange is in the federally-established New Haven/Meriden metropolitan area, its AMI has for decades been lower than SMI. For that reason, the failure to use SMI would not make a difference in this town. Verification of the use of the lower of AMI and SMI should, however, be part of any municipal moratorium application.

Particular developments

- We have not analyzed the eligibility and HUE point counts for all developments submitted. Of the point counts that we have reviewed, however, we note that some calculations seem, at best, questionable.
    - For example, Silver Brook Estates is described as "Congregate Elderly Housing, but the claim of rental points seems to assume it is not age-restricted. In addition, age-restricted housing is not eligible for the 22% bonus for pre-1995 developments. See C.G.S. 8-30g(L)(6)(F).
    - Beecher Walk is described as age-restricted (age 55 and older) and is therefore eligible for only ½ a point per unit. Market rate units in an age-restricted development are not eligible for any points.
    - The summary pages do not indicate the duration of deed or other affordability restrictions. They also do not indicate the dates of application to the zoning commission, which impact both the duration of affordability restrictions and the level of affordability required. The Department should make sure that this information is provided and verified.
- These miscalculations raise concerns about the calculations throughout the application. We trust that DOH will, as it has done in the past, scrutinize the application carefully.

Thank you very much for considering these matters in your review of this application.,

/s/ *Raphael L. Podolsky*

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