Connecticut Legal Services
Advancing Justice

Raphael L. Podolsky
Email RPodolsky@ctlegal.org
Phone (860) 836-6355
16 Main Street, New Britain, CT 06051

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

Re: 8-30g moratorium application of the Town of New Canaan

Dear Commissioner Mosquera-Bruno:

As you know, I am an attorney and policy advocate with Connecticut Legal Services with a specialty in housing law. I was also a member of the first Blue Ribbon Commission on Housing in 1987-1989, which drafted the proposal that was adopted in 1989 and codified as Section 8-30g of the Connecticut General Statutes. In addition, I was a member of the second Blue Ribbon Commission on Affordable Housing in 1999-2000, which proposed the bill that created the moratorium provisions of Section 8-30g. I have long been involved in the drafting, modification, and interpretation of C.G.S. 8-30g.

I write to comment on two issues of particular concern to me that have been raised regarding the New Canaan moratorium application. These are (1) the counting of holdover points and (2) the subtraction for demolished affordable housing. I believe that New Canaan's interpretation of the statute on these issues is contrary to both the letter of the law and the underlying purpose of those sections of the statute. In effect, it produces a moratorium when the required point minimum has not been achieved. I hope that the Department will reject those interpretations and preserve the integrity of the statute.

<u>Holdover points</u>

C.G.S. 8-30g simply does not allow the counting of holdover points in order for a town to obtain a moratorium. The statute is clear. C.G.S. 8-30g(L)(3) explicitly authorizes the counting of units constructed during a first moratorium toward a second moratorium. It reads: "Eligible units completed after a moratorium has begun may be counted toward establishing eligibility for a subsequent moratorium." This is obviously in contrast to units completed before a moratorium has begun. From a legislative drafting perspective, its function is to make clear that the moratorium provision of 8-30g is not limited to a one-time moratorium for each town. Instead, a town can obtain <u>multiple</u> moratoria by <u>continuing</u> to actively develop new 8-30g-compliant affordable housing, including during the period of a moratorium. For a first moratorium, moratorium points can be awarded for housing built to 8-30g standards after the effective date of C.G.S. 8-30g, i.e., July 1, 1990. Second and subsequent moratoria, however, are for the production of new housing after a prior moratorium has begun. The count, as

provided in 8-30g(L)(3), is for new construction (and new deed restriction) after the start of a moratorium period.

This is an essential part of the legislative policy behind the moratorium provision itself. The purpose of multiple moratoria is to encourage towns to take the initiative during a moratorium to promote new affordable housing development in the locations and with the design that it wants. It responded to municipal complaints of development being developer-directed. It was absolutely NOT to incentivize the town to block additional affordable housing development. It is not an exemption from 8-30g but a moratorium. Indeed, the original three-year moratorium was extended to four years in 2002 by P.A. 02-87 so as to give towns an extra year after the start of a first moratorium to reach the goal of obtaining a second moratorium by generating additional affordable during the moratorium period. Under New Canaan's interpretation, a town that is not exempt from 8-30g (i.e., a town with fewer than 10% of its housing units either government-assisted or subject to affordability deed restrictions) could for many years block new housing development by permitting a single large housing development and "banking" the units to extend the authorized four-year moratorium for as many years as possible without generating new government-assisted or deed-restricted housing. That would actually be the opposite of the purpose of a moratorium.

Subtraction of points for demolition

As with holdover points, the failure to subtract for the demolition of existing government-assisted or deed-restricted housing is contrary to both the letter of 8-30g and its purpose. The statute requires subtraction for units that "cease being counted as an affordable housing unit." Because demolished (or otherwise discontinued) units are existing units, the test for counting them against moratorium points is necessarily based on their status on the 10% list, not on whether it they would qualify for moratorium points. That is because moratorium points are based on new units, which must meet the current affordability requirements of 8-30g. Demolished units, in contrast, are older affordable units, which will have met affordability standards years before when they were built, i.e., they would have been eligible for the 10% list.

A reduction for the units that were demolished in the New Canaan application is necessary for multiple reasons. First, the definition of "affordable housing development" includes "assisted housing" (i.e., government-subsidized housing), for which the distinction between state and area median is not relevant. Demolition of assisted housing is plainly covered by 8-30g(L)(8). It is my understanding that the demolished units were assisted housing. It is also my understanding that, at least until recently, New Canaan itself reported the demolished units as assisted housing for purposes of the 10% exemption list.

Second, the countability of set-aside housing is determined by the rules of 8-30g when it was built or, if built before 1990, as the 8-30g rules existed in 1990. For example, a building constructed in 1998 with a 25% affordability set-aside and a 30-year deed restriction would not have been deleted from the 10% exemption list when the 30%/40-year requirement for new

affordable housing construction was imposed in 2000. Similarly, pre-1995 housing priced at the area median income affordability level when it was opened did not lose its eligibility on the 10% list in 1995 when state median income was added to 8-30g. The demolition of such housing is a reduction in affordable housing and must be subtracted from a moratorium application. This is true, even if the same housing built now would not qualify for moratorium points, because the moratorium is based on current new construction.

New Canaan's interpretation is also directly contrary to the purpose of the 8-30g moratorium. The goal of the moratorium is to reward towns in which a substantial number of affordable units are added to the town's housing stock. C.G.S. 8-30g(L)(8) is designed to prevent the award of a moratorium when affordable units are demolished. Replacement units are, of course, entitled to be counted toward the moratorium, but they add to the number of units available to town residents only to the extent that existing units remain. The moratorium is not intended to reward a town for demolition of affordable housing, and it is certainly not meant to incentivize demolition. For example, what if a 50-unit set-aside development built to 8-30g requirements in 1994 were replaced with a 25-unit set-aside development built to 8-30g requirements in 2022? On the New Canaan theory, there would no reduction in moratorium points for the demolition, so that the town would receive full moratorium credit for reducing the number of affordable units. This would be contrary to the purpose of both the moratorium and 8-30g itself.

We urge the Department to protect the integrity of 8-30g's moratorium provisions. It should not create exceptions to 8-30g by counting pre-moratorium units toward a new moratorium or by failing to set off demolition of housing built as affordable units when such units are demolished to make way for new housing.

Thank you very much for your consideration of this comment.

Sincerely,

/s/ *Raphael L. Podolsky*
Raphael L. Podolsky