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Via Email/PDF to Mr. Santoro and Ms. Watson,
with two hard copies hand-delivered to Ms. Watson

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
Department of Housing
505 Hudson Street
Hartford, CT 06106-7106

Laura Watson, Agent
Department of Housing
505 Hudson Street
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Re: Comment On Town Of Orange's 2024 Revised Application For Certificate Of Affordable Housing Completion and § 8-30g Moratorium

Dear Commissioner Mosquera-Bruno, Mr. Santoro, and Ms. Watson:

We are writing to comment on the Town of Orange's April 30, 2024 application for a § 8-30g moratorium.

The application is accompanied by deeds and affordability plans, but does not contain evidence of annual, ongoing compliance with maximum household income and rent requirements, as required by § 8-30g and its regulations and by General Statutes § 8-30h. My office has been in contact with Orange's Town Attorney Vincent Marino about this concern. Attorney Marino advised that Town officials are attempting to locate compliance reports, but we have not seen any and assume they have not yet been provided to the Department. It is, of course, essential to the moratorium process that the municipality prove that rents have been properly calculated and qualifying incomes verified, not just that the units were approved and built.

The § 8-30g Moratorium Process

Section 8-30g includes a number of requirements for an application for a Certificate of Affordable Housing Completion. See General Statutes § 8-30g(1)(4)(B). These requirements include: (a) a complete application that allows town residents, and then DOH and the public, to understand and verify all point total claims; and (b) evidence of on-going, annual compliance during residential occupancy with maximum household income and maximum rent or sales prices.

Section 8-30g is a remedial statute, adopted to assist property owners in overcoming exclusionary zoning regulations and onerous application processing requirements that result in denials of affordable housing proposals based on insubstantial, unproven, and/or pretextual reasons. As such, requirements for any exemption from § 8-30g, such as a moratorium application, must be strictly construed. See, e.g., *Kaufman v. Zoning Comm'n*, 232 Conn. 122, 139-40 (1995).

The Town Has Not Submitted Evidence Of On-Going Affordability Compliance Required To Receive Moratorium Points

Numerous statutory and regulatory provisions require proof of continuing compliance with affordability plan oversight, administration, and enforcement obligations.

General Statutes § 8-30h mandates that owners of affordable housing developments containing rental units “provide annual certification [by January 31] 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 assumes that the municipality has the capacity and attends to its obligation to confirm that “the development is in compliance.” The municipality, therefore, has an ongoing oversight obligation.

The failure of a development to comply with 8-30h would itself put the development out of compliance with the requirements for an “affordable housing development,” and should preclude the municipality from counting that development in an application for a moratorium.

Ongoing compliance is also required by other parts of the § 8-30g statute and state regulations. State 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 as of the application date, § 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 the start of 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.

It is important to note that proof of ongoing compliance is a burden which can be easily met by assuring that annual certifications are filed and verified.

The Town's moratorium application, therefore, is incomplete at this time for failure to provide proof of ongoing compliance with income and rent limits.

**There Is No Need For The Department To Address
Holdover Points In This Application**

Orange's application claims ample points for a moratorium but does not rely on *per se* holdover points or request the Department to take a position about future moratoria. There is no reason for the Department to consider holdover points in this application, or suggest whether the Town may use points collected since 1990 for a future moratorium. Such an application is not before the Department at this time. Moreover, the 2024 statutory amendment regarding holdover points is clearly prospective only, and inapplicable to this application.

Conclusion

Every town that qualifies for a moratorium under the rules and regulations should be granted one, but this application, at this time, requires additional information.

Thank you.

Very truly yours,



Timothy S. Hollister

TSH:afz

cc: Town Attorney Vincent Marino
Town Planner Jack Demerjian