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February 4, 2025

VIA ELECTRONIC MAIL ONLY: CT.HOUSING.PLANS@ct.gov

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

Re: Town of Fairfield's Application for Certificate of Affordable Housing Completion

Dear Commissioner, Mr. Santoro, and Ms. Watson:

I am writing to comment on Fairfield's pending §8-30g moratorium application.

I am not writing on behalf of any client, organization, entity, or person. As you know, I assisted the Department, as a contractor, with drafting the moratorium regulations in 2002, and since then have commented on several moratorium applications, including those filed by the Town of Westport and New Canaan in which the issue of proof of ongoing compliance with affordability plan requirements was raised. As you also know, I am counsel to the declaratory ruling petitioners in *751 Weed Street, et al v. CT Department of Housing*, which is pending at the Department and has put before the Department the same issue as raised in this letter.

Attached is an excerpt from Brief filed by my office in support of the *751 Weed Street* declaratory ruling petition. I ask that the attached be incorporated into this comment. At pp. 1-5, 14-17, and 20-21, the Brief explains why the §8-30g moratorium rules require proof of ongoing affordability plan compliance for a development to qualify for Housing Unit Equivalent (HUE) a/k/a "moratorium" points. Again, there is no need to repeat the *751 Weed Street* arguments here, so I have incorporated them by reference.

In summary, Fairfield's application does not contain any information whatsoever about ongoing affordability plan compliance, even though for most developments, the provided documents show that such information has been prepared and is available. For 21 developments,

not a single General Statutes § 8-30h report has been provided. Unlike the Town of Simsbury's pending application, Fairfield has not even filed any current/2024-25 compliance information.

The application's pages are not numbered, but the following developments, for example, contain express requirements for preparation of annual compliance information, yet Fairfield has not complied or submitted any of it:

- the Alto Fairfield development, see Declaration of Restrictions, p.1;
- the 333 Unquowa Road, LLC development, Declaration p.1;
- the Beacon Square Properties, LLC development, Declaration p.1;
- the Beaumont Properties development, Deed Restriction, p. 5 (Vol. 5092, p. 255);
- the MICAH Housing development, Declaration p. 3 (Vol. 6558, p. 186); and
- the Pine Tree Housing development, Declaration p. 10, Vol. 5392, p. 152.

Simply put, as explained in our 751 Weed Street Brief of December 20, 2024, *where a town has not supplied the Department with ongoing affordability compliance information, especially when the development owners clearly have this information, that development should not be awarded moratorium points.*

The Department should first inquire of the Town of Fairfield as to why this compliance information has not been provided, and declare the application incomplete at this time.

Thank you for your attention.

Very truly yours,

Timothy S. Hollister

/TSH

Attachment

cc: Mark Barnhart, Economic Development Director (via email)

751 WEED STREET, LLC, W.E. PARTNERS, LLC, 51 MAIN STREET, LLC AND HILL STREET-72 LLC	:	CONNECTICUT DEPARTMENT OF HOUSING
	:	STATE OF CONNECTICUT
v.	:	
CONNECTICUT DEPARTMENT OF HOUSING AND THE HON. SEILA MOSQUERA-BRUNO, COMMISSIONER	:	DECEMBER 20, 2024

BRIEF OF 751 WEED STREET, LLC, W.E. PARTNERS, LLC, 51 MAIN STREET, LLC, AND HILL STREET-72, LLC, IN SUPPORT OF PETITION FOR DECLARATORY RULING REGARDING CONN. GEN. STAT. § 8-30g MORATORIUM PROCEDURE AND REQUIREMENTS

By a revised Notice and Order dated November 21, 2024, the Department of Housing and Commissioner Seila Mosquera-Bruno have agreed to issue a declaratory ruling on two questions, more fully stated in the Order itself, Exhibit A, attached, but summarized as (1) whether applying for a four-year moratorium from § 8-30g requires the applicant municipality to provide evidence, for the residential units claimed for Housing Unit Equivalent ("HUE") points, of ongoing compliance with applicable affordability requirements and limits; and (2) whether a municipality is exempted from deducting HUE points for affordable units that were demolished to make way for construction of the units now claimed for moratorium points by showing that the demolished units, if rebuilt today and subjected to current § 8-30g affordability standards, would not qualify as affordable dwelling units.

This Brief contains the answers and responses of the petitioners to these questions.

As the Department is aware, the petitioners are entities whose § 8-30g applications were denied by the New Canaan Planning and Zoning Commission in 2023, which denials have been

appealed to and are pending in Superior Court. Though these applications and appeals are ostensibly grandfathered from the moratorium granted to New Canaan in August 2024, the appeals are not over, and thus the petitioners have a substantial interest in the Department's response to these declaratory ruling issues.[1]

Although the Petition and this Brief focus primarily on New Canaan's June 2024 application and the Department's August 2024 approval, the questions raised here are, of course, applicable to all moratorium applications. In this regard, this Brief also discusses, as further examples, the recently-approved moratoria in Waterford and Orange, and an application by Fairfield that, as of the date of this Brief, is at the municipal review and comment stage.

In July 2024, in response to New Canaan's June 2024 revised moratorium application, the petitioners here filed a detailed comment addressing, in the specific New Canaan context, the two issues to be addressed here. That comment explained, first, that New Canaan's application did not contain evidence of ongoing compliance with affordability requirements, especially maximum household income and rent requirements, as required by General Statutes § 8-30g and its Regulations, and by § 8-30h. The petitioners spelled out errors, omissions, and inconsistencies between New Canaan's application and the applicable Affordability Plans, financing requirements, and website information about Millport and Canaan Parish as to which units are subject to which affordability rules, and whether each development has complied. The petitioners on July 8, 2024 requested the Department to compel the Town, the New Canaan Housing Authority, and Westmount Management (the Town's affordability Administrator) to produce proof of past and current compliance with affordability rules at both redevelopments before the Department evaluated the moratorium points claims. (Because Millport Phase II only opened in 2017, and Canaan Parish Phase I in 2021, this was not an onerous request.) It is our

[1] As the Petition and Order reflect, the petitioners have requested that the Department invalidate the August 2024 New Canaan moratorium if it answers either declaratory ruling in a manner contrary to its moratorium approval. The moratorium statute and regulations specifically provide for such a challenge. In its Order, the Department has reserved this request for evaluation after its March 2025 ruling.

understanding that the Department did not request this information, even though the moratorium regulations authorize it to do so. The Town did not volunteer the information. See Exhibit B.

As to the statutorily-required deduction of points for affordable units that were demolished to enable the redevelopment of Millport and Canaan Parish, New Canaan's application asserted, without any statutory or regulatory basis, that it is exempt from the point deduction statute because the units demolished would not have qualified for moratorium points under current § 8-30g criteria if constructed today. We pointed out that this is not what the statute provides, and the Town's position is illogical and indefensible. The Department agreed with the Town, without explaining its statutory interpretation or responding to our comment and other similar ones received.

The § 8-30g Moratorium Process

Section 8-30g was adopted in 1989, Public Act 89-311, effective July 1, 1990. In 2000, in Public Act 00-206, the General Assembly adopted the moratorium process, under which the Department grants a town "housing unit equivalent" 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 residential units will be preserved for 40 years or more for low and moderate income households. See General Statutes § 8-30g(l)(4)(A). It is important to note that both Millport and Canaan Parish are assisted housing, not set-aside developments.

The moratorium rules were the recommendation of the 1999-2000 Second Blue Ribbon Commission on Affordable Housing, of which both undersigned counsel were members. In addition, in 2002, under contract to the Department of Housing, the undersigned (Attorney Hollister) drafted what became the moratorium regulations, codified at Conn. State Agency Regs. § 8-30g-6.

Section 8-30g is a remedial statute, adopted to assist property owners and low and moderate income households 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, must be strictly construed against the applicant municipality. See e.g., *Kaufman v. Zoning Comm'n*, 232 Conn. 122, 139-40 (1995).

A Brief Chronology Of The Affordability Compliance Issue

As noted, the moratorium statute and regulations were adopted in 2000 and 2002, respectively. Since then, 19 towns have received a moratorium, with six of these towns having received two.

Prior to 2019, the information submitted in support of moratorium applications, including with respect to affordability compliance and points deductions, varied, and the Department generally relied on and accepted summary statements from the Town Attorney, Town Planner, or some other town official that eligibility for the points claimed had been "verified." Moreover, none of these applications was challenged by any property owner in the municipality. In this way, a practice was established of relying on otherwise unsupported claims of compliance with affordability and moratorium rules. Undoubtedly, the Department was also content to not shoulder a substantial administrative burden of reviewing applications for compliance.

The first challenge to a moratorium based on a lack of affordability compliance occurred in Westport in 2019. While Summit Saugatuck LLC was pursuing a 180 unit § 8-30g set-aside development, Westport applied for and obtained a moratorium. Summit uncovered Town files showing that Westport had not been monitoring affordability compliance prior to 2018, and had started to do so only in anticipation of filing a moratorium application in 2019. This effort coincided with the Town's opposition to Summit's development application. In addition, even though Summit's zoning application, having been filed in November 2018, several months before the moratorium, was grandfathered, the possibility remained that a court might remand

the application to the Planning and Zoning Commission, which might then try to use the moratorium to block the application. In 2021, two years into the 2019 moratorium, Summit settled all land use matters with Westport and withdrew its moratorium challenge. Westport's moratorium continued, and expired in 2023.

The Westport application exposed the fact that representations of affordability compliance were being made to the Department without supporting evidence, and the Department was continuing to accept points claims even when not documented. Since the Westport matter, housing advocates have regularly filed comments with the Department that the moratorium statute and regulations require proof of ongoing affordability compliance, and the Department should not approve an application without such evidence. The New Canaan 2024 moratorium application and comments, and this petition, are a continuation of, and the result of, this issue.

or information about ongoing compliance, even for the most recently approved developments. (In our comment, we noted that we had contacted Orange's Town Attorney to alert him to the need for evidence of affordability compliance, and he responded that he would try to obtain it, but apparently was unable to do so.)

The Department also approved an application by the Town of Waterford in 2024. That application, at least, included current year compliance information from the managers of two of the five developments claimed for points, but no § 8-30h reports or other, earlier affordability compliance information.

As of the date of this Brief, the Town of Fairfield has filed an application that is pending at the local level, and we assume will be transmitted soon for Department review. An extensive review and comment is not appropriate until formal submission, but the local application does not appear to have any § 8-30h reports or any ongoing compliance information. For each development for which points are claimed, the Town has only provided a HUE points calculation, information on the subject property from appraisal files, and a copy of affordability plans or recorded restrictions.

It is evident from these most recent applications that towns applying for moratoria believe that the Department regards compliance with § 8-30h as not mandatory, including for moratorium applications, and evidence of ongoing affordability compliance as unnecessary.

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c. calculation of maximum monthly rent and utility payment required by § 8-30g or an assisted housing program or agreement(s); and

d. statement of actual rent and utility allowance charged to the tenant.

6. For a conventional set-aside development, with uniform income, rent, and utility limits, this information should not be difficult to compile and submit with a moratorium application. As the Millport and Canaan Parish applications amply demonstrate, where a development is assisted housing and a variety of financing agreements can result in a variety of income, rent, and utility limits, the applicant municipality must take on the burden of proving unit-by-unit compliance. Again, this should not be an onerous burden, because *at least at Millport and Canaan Parish, the financing documents and agreements themselves require the owner/borrower/affordability administrator to provide this information to lenders anyway*, so a town preparing a moratorium application only needs to collect existing information, not create it from scratch.

7. It is next important to emphasize that once a town, as applicant, compiles and submits this information with a verification that it has verified compliance, the Department should be entitled to rely on that, as opposed to verifying each number. *What a town should not be permitted to do, especially with an assisted housing development with more complex financing and affordability commitments, is submit a verification without supporting proof of compliance.*

Conclusion

The purpose of § 8-30g as a remedial statute is to assist with the approvals of set-aside and assisted housing developments by providing a process and standards for judicial review of zoning and planning commission denials of applications. In 1999-2000, the legislature adopted the moratorium system to provide "relief" to towns that had not only approved but overseen the construction and occupancy of affordable units. But § 8-30g and the moratorium system plainly include and necessarily require municipal oversight, monitoring, and enforcement, which are expressed in both § 8-30h and the several provisions in § 8-30g and the moratorium statutes and § 8-30g regulations that command keeping tabs on affordability compliance in occupied developments. It simply cannot be that the legislature spelled out detailed affordability requirements without imposing a compliance obligation. It further cannot be that the legislature intended to grant an exemption from § 8-30g, a remedial statute, by awarding moratoria to municipalities that have ignored their compliance obligations and have, and have had, no idea if affordable unit occupants actually qualified for tenancy and have been paying compliant amounts for rent and utilities. Respectfully, in its recent moratorium approvals, the Department has been

shirking a core obligation of its mission and undermining key purposes of § 8-30g. It should answer both declaratory ruling questions to correct past practice and restore critical aspects of § 8-30g.

PETITIONERS,
751 WEED STREET, LLC,
W.E. PARTNERS, LLC, AND
51 MAIN STREET, LLC

By: /s/ *Timothy S. Hollister*

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