

IN THE MATTER OF:

DECEMBER 23, 2024

TOWN OF NEW CANAAN  
CERTIFICATE OF AFFORDABLE HOUSING  
COMPLETION/MORATORIUM APPLICATION  
PURSUANT TO C.G.S. § 8-30G

**TOWN OF NEW CANAAN'S INTERVENOR MEMORANDUM  
IN OPPOSITION TO PETITION FOR DECLARATORY RULING**

The Intervenor, Town of New Canaan, submits the following in response to the Petition for Declaratory Ruling filed by 751 Weed Street, LLC; W.E. Partners, LLC; 51 Main Street, LLC; and Hill Street-72, LLC dated September 13, 2024.

**I. FACTS AND PROCEDURAL HISTORY**

In 2017, after years of considerable planning and effort, the Town had increased its affordable housing so much that it qualified for a Certificate of Affordable Housing Completion under C.G.S. § 8-30g. So, on March 30, 2017, the Town submitted a full application to DOH and by May 23, 2017, DOH validated the Town's labors and approved the issuance of a Certificate of Affordable Housing Completion. (Exhibit A, p. 1). As a result, for the first time in New Canaan, the statutory four-year moratorium against application of the affordable housing appeals procedure under § 8-30g went into effect.

Although units from several different housing developments were claimed in the Town's 2017 application, for purposes of this Petition it is important to note that DOH, in its methodology of approval, specifically accepted that the Town had claimed two out of the thirty-three completed units at the development called "Millport Apartments – 33 Millport Avenue," and that "the remaining 16 (sixteen) units in this building and the 15 (fifteen) units in Building 2 at 35 Millport Avenue *will be claimed in a future application.*" (Emphasis added) (Exhibit A, p. 6).

On June 5, 2022, the Town's 2017 moratorium expired. Yet between 2017 and 2022, the Town had continued to increase its affordable housing stock, in large part due to the ongoing

commitments of the New Canaan Housing Authority and other local affordable housing organizations to construct developments with 100% affordable units.

As a result, on July 21, 2022, the Town filed its second application for a Certificate of Affordable Housing Completion/Moratorium (the “Application”) with DOH. In the Application, the Town claimed a total of 87 units from two developments for a total of 152.5 housing unit equivalent (“HUE”) points under C.G.S. § 8-30g. Most units claimed in the Application were those located at Millport Apartments – 40 new units that had been completed after 2017, but also the same 31 units left over from 2017 that had already been completed before the first moratorium. DOH verified that the Town required a total of 151.02 HUE points to qualify for approval.

On October 18, 2022, DOH issued its decision to the Town denying the issuance of a new Certificate of Affordable Housing Completion/Moratorium on the basis that the Application did not meet the necessary requirements. More specifically, DOH did not, in fact, consider the 31 units left over from the 2017, despite DOH’s express finding in the 2017 approval, because those units had been completed prior to the issuance of the Town’s first moratorium and, under DOH’s interpretation of C.G.S. § 8-30g(1)(3), could not be considered.<sup>1</sup>

The Town subsequently challenged said DOH denial by filing a petition for reconsideration to DOH under C.G.S. § 4-181a, and after a rejection, a Petition for Declaratory Ruling to DOH under C.G.S. § 4-176, opposing the denial of the moratorium application. After DOH found against the Town in the Petition for Declaratory Ruling, the Town has since appealed said decision to Superior Court and which matter is currently still pending. Town of New Canaan c. State of Connecticut Department of Housing; Docket No. HHD-CV23-6171860-S.

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<sup>1</sup> See DOH Methodology: “In accordance with CGS Section 8-30g (1)(3), ‘Eligible units completed **after** a moratorium has begun may be counted toward establishing eligibility for a subsequent moratorium’ (*Emphasis Added*). New Canaan’s initial Certificate of Affordable Housing Completion was issued on June 6, 2017; therefore, only those units that received a Certificate of Occupancy on or after June 6, 2017, are eligible for consideration.”

In years thereafter, the Town continued to increase its stock of affordable housing. By 2024, the Town had reached levels of new affordable housing units well above and beyond the units claimed in the 2022 Application – a total number of units that would avoid the whole question of eligibility raised in the 2022 denial. For these reasons, the Town reapplied to DOH for a revised Certificate of Moratorium Completion on June 20, 2024. DOH subsequently granted the Application on August 19, 2024. Said approval is currently under appeal in the present action.

## **II. ARGUMENT**

Section 8-30g(1)(8) is not applicable to the Town’s Application because the prior dwelling units were not “affordable dwelling units” as contemplated by Section 8-30g. Although the prior units were included on the 1990 Affordable Housing Appeals List maintained by DOH, a critical factor is that those prior units had been restricted to 80% Area Median Income (“AMI”) – which in New Canaan, is not the applicable metric for determining affordability under Section 8-30g.

For purposes of a Certificate of Affordable Housing Completion, Section 8-30g awards HUE points for dwelling units in newly constructed “affordable housing developments,” which include both government “assisted housing” and private “set-aside developments.” The law expressly requires that dwelling units in a set-aside development be restricted to persons whose income is less than 80% of the “median income.” Median income is defined as “the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located....”

In New Canaan, the AMI is much higher than State Median Income (“SMI”). For example, the 2023-24 estimated AMI for a family of four in the Stamford-Norwalk Metro Area is \$171,300 (see figures in Tab 2). The 2022 SMI for a family of four is \$133,184 (see Tab 2). Therefore, to constitute an “affordable dwelling unit” eligible for HUE points and subject to the broader

protections of Section 8-30g, assisted housing or set aside developments in New Canaan must be restricted to 80% SMI, not AMI.

As discussed above, the prior dwelling units at Canaan Parish and Millport Apartments had been restricted to 80% AMI, not SMI, and therefore do not constitute “affordable dwelling units” subject to deductions under Section 8-30g(1)(8). Moreover, the units claimed for HUE points in this Application are not only brand new and fully updated, but they are also drastically more affordable than the pre-existing units and cannot be considered comparable replacements to the deteriorated pre-existing units formerly at Canaan Parish and Millport Apartments. No point deductions are required.

This is consistent with the methodology employed by DOH when approving the Town’s Certification of Affordable Housing Completion in 2017, which awarded HUE points for new units in similar developments but applied no deductions. In addition, even though DOH ultimately denied the Town’s recent application in 2022, points had been awarded for the units claimed from these same developments that were CO’ed after the Town’s 2017 Moratorium approval. In other words, DOH has never interpreted the types of units claimed in this Application as replacement units subject to points deductions under C.G.S. § 8-30g(1)(8).

Moreover, none of the units claimed in this Application were CO’ed prior to the Town’s 2017 Moratorium. Therefore, even under DOH’s current interpretation of § 8-30g that provided the basis for denial of the Town’s Application in 2022, all the units claimed now may be validly considered for HUE points.

The Town requests that the DOH record for the prior 2022 and 2024 moratorium applications be including in consideration of this pending petition and the Town reserves the right to cite to and brief such matters as deemed appropriate by the DOH.

THE PETITIONER  
TOWN OF NEW CANAAN

A handwritten signature in blue ink, appearing to be 'NB' followed by a long horizontal stroke.

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