

March 31, 2023

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

Re: Petition for Declaratory Ruling in the Matter of Town of New Canaan Certificate of Affordable Housing Completion/Moratorium Application Pursuant to C.G.S. §8-30g

Dear Commissioner Mosquera-Bruno:

This submission is in response to the Notice and Order originally issued on January 31, 2023, in regard to the Department's decision to issue a declaratory ruling on two specific matters related to the 8-30g moratorium application of the Town of New Canaan. It is substantially the same as the first portion of the comment, dated September 1, 2022, that I filed in regard to the original New Canaan application. It addresses only the first of the two bullet points in the Department's Notice and Order, i.e., the claim of "carryover" HUE points.

As I indicated previously, New Canaan's interpretation of the statute on this issue is contrary to both the letter of the law and the underlying purpose of the moratorium sections of the statute. In effect, it produces a moratorium when the required point minimum has not been achieved. The Department was correct in not counting these claimed points, and I hope that the Department will stand by that decision in issuing a declaratory ruling.

C.G.S. 8-30g simply does not allow the counting of carryover points in order for a town to obtain a second 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 multiple moratoria by continuing 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, when no moratorium provisions existed in the statute. 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 reading of 8-30g 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 time-limited 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 dwelling units 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 using a single large housing development to "bank" the units so as 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 an 8-30g moratorium.

I urge the Department to protect the integrity of 8-30g's moratorium provisions. Neither the language nor the purpose of 8-30g permits the carrying over of moratorium points to a subsequent moratorium application.

Thank you very much for your consideration of this submission.

Sincerely,

/s/ *Raphael L. Podolsky*

Raphael L. Podolsky