

IN THE MATTER OF:

DECEMBER 2, 2022

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

PETITION FOR DECLARATORY RULING

Pursuant to the Uniform Administrative Procedures Act, C.G.S. § 4-176, the Town of New Canaan (“Town”), hereby petitions the State of Connecticut Department of Housing (“DOH”) for a declaratory ruling as to the applicability of C.G.S. § 8-30g, notably subsection 8-30g(1)(3), to the current status of affordable housing within New Canaan and the Town’s resulting eligibility for a Certificate of Affordable Housing Project Completion/Moratorium pursuant to that section.

This Petition is necessitated in response to the decision by DOH Commissioner Seila Mosquera-Bruno dated October 18, 2022, denying the issuance of a Certificate of Affordable Housing Project Completion to the Town. The Town believes that the basis for the denial – that for purposes of a moratorium, C.G.S. § 8-30g prohibits consideration of affordable units completed prior to when a moratorium has begun – is fundamentally flawed based not only on the plain language of the cited statute, but also based upon past practice and custom.

The effective result of this wholly unexpected and never-before-seen rationale for denial is that the Town of New Canaan can never include 31 completed affordable units in a moratorium application to DOH; 31 units that cost tens of millions of dollars to construct after years of planning and construction. These units were built by the New Canaan Housing Authority as part of a 100% affordable development in Town, similar to the vast majority of other affordable housing created in New Canaan that would not have otherwise been constructed due to the high cost of land and the resulting economic disincentive to private developers. The broader impact of the decision

signifies an alarming policy shift by DOH contrary to the intent of § 8-30g to encourage the ongoing creation of affordable housing.

For all these reasons, the Town believes the decision was rendered in error and must be reconsidered by DOH. This Petition provides the procedural mechanism for DOH to review the legal basis for its October 18, 2022 decision and rule whether such an interpretation of § 8-30g is in fact consistent with the law. Put simply, the sole issue is this: Does § 8-30g(1)(3) preclude the consideration of affordable units that were completed prior to a moratorium toward establishing eligibility for a subsequent moratorium?

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. (Exhibit B). 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. (Exhibit B). 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. (Exhibit B, p. 7).

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. (Exhibit B). More specifically, DOH did not, in fact, consider the HUE points attributable to 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 current interpretation of C.G.S. § 8-30g(1)(3), could not be considered.¹

¹ See Exhibit B, p. 4 (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."

On November 2, 2022, within the period of time allotted for the filing of a petition for reconsideration under C.G.S. § 4-181a, the Town filed a Petition for Reconsideration with DOH. On November 9, 2022, DOH declined to reconsider the matter.

On December 2, 2022, the Town filed the present Petition for Declaratory Ruling with DOH, which in substance raises similar issues as the prior Petition for Reconsideration.

II. ARGUMENT

C.G.S. § 8-30g(1)(3) does not prohibit consideration of affordable units completed prior to the issuance of a moratorium in future moratorium applications – this is supported not only under the law of statutory interpretation, but also under DOH’s own past practice.

The sole provision upon which DOH based its decision is C.G.S. § 8-30g(1)(3), which provides in its entirety: “Eligible units completed after a moratorium has begun may be counted toward establishing eligibility for a subsequent moratorium.” While DOH may interpret this limited language as an affirmative prohibition, the Town believes a more reasonable interpretation consistent with the underlying policy of 8-30g is that the section merely clarifies that units constructed after the issuance of moratorium will not be rejected from consideration in future applications. Nothing more.

When interpreting state law, the courts will “seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of the case, including the question of whether the language actually does apply.” In seeking to determine that meaning, C.G.S. § 1-2z directs the court to first to consider the plain text of the statute itself and its relationship to other statutes.

With the court’s guidance for statutory interpretation in mind, the Town submits that the plain language of § 8-30g(1)(3) is dispositive. Simply put, the statute provides that “units completed after a moratorium has begun may be counted” – it says nothing about what may *not* be

counted, or under what circumstances. And in the broader context of § 8-30g, that makes sense because the express provisions of that statute encourage the ongoing creation of affordable housing in municipalities across the state – they do not create disincentives that would deter municipalities from continuing to build more affordable housing as quickly as possible.

Practically though, under DOH’s interpretation of § 8-30g(1)(3), disincentive is precisely what would occur. Because if a municipality knows that DOH will not consider units completed before a moratorium has begun in a later moratorium application, municipalities may feel compelled to avoid “losing credit” for those units (which require huge amounts of funding to build), and instead hold off on constructing additional units until only those times that a moratorium is actually in effect. This cannot be the intention of § 8-30g.

Even if the plain language of § 8-30g(1)(3) is not dispositive, past practice of DOH is further indication that it has adopted a faulty interpretation in this instance. “If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” *Booker v. Jarjura*, 120 Conn. App. 1, 8–9, cert. denied, 297 Conn. 909 (2010). So if the statutory language is not plain and unambiguous, the court will look to other evidence of the law’s meaning, including past practice and interpretation.

As noted above, when DOH approved the Town’s first moratorium in 2017, it specifically stated in its approval methodology letter that:

“Only two of the 18 family rental units within Building 1 at 33 Millport Avenue are being claimed in this Application; ***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).

This statement clearly shows that DOH, at least at that time, accepted and even reiterated the Town’s interpretation of § 8-30g(1)(3), as the Town had stated up front in its 2017 application that it claimed only two of the then-completed units and the remainder would be held for a future application. If DOH felt those units could not be considered in the future, the 2017 approval letter would have been the opportunity to make that very important point crystal clear. Instead, DOH said the opposite, and the Town has since relied upon that representation when approving and funding the ongoing construction of additional affordable housing.²

In addition, it appears that DOH has applied this new prejudicial interpretation of § 8-30g(1)(3) to the Town’s Application, but not to applications by other municipalities that claim the same type of units. Like New Canaan, in 2017, DOH approved the Town of Brookfield for its first a Certificate of Affordable Housing Completion/Moratorium.³ The Brookfield moratorium expired July 24, 2021 and Brookfield subsequently reapplied for a new Certificate. Then on June 2, 2022, DOH approved Brookfield for its second Certificate/Moratorium. (Exhibit C). Nowhere within the Brookfield approval letter is there any reference to § 8-30g(1)(3).

However, upon examination of the 2022 approval letter issued by DOH to Brookfield, it is clear that DOH did in fact count units completed prior to the *first* moratorium in 2017, completely contrary to the process employed by DOH a few months later when reviewing New Canaan’s Application. For example, the units attributable to “Carlins Way” in the Brookfield Application were completed when the affordability deed restrictions went into effect⁴ in 2008 – almost a decade

² Under the law, these circumstances also provide grounds for a waiver and estoppel claim against DOH, given that the Town has detrimentally relied upon DOH’s express finding in 2017 that the majority of affordable units at Millport Apartments competed at that time would be reserved for consideration by DOH in a future application.

³ See DOH issued “Activity relative to a Moratorium under Affordable Housing Land Use Appeals Act, Section 8-30g CGS”, effective 3/28/22, <https://portal.ct.gov/-/media/DOH/Moratorium-History-March-28-2022.pdf>.

⁴ C.G.S. § 8-30g(1)(9).

prior to when a moratorium had first “begun” in Brookfield.⁵ (Exhibit B, p. 5). The same can be said about most of the units claimed in the Brookfield Application: “139 Tower Road,” “Mill River,” “20 Orchard Place,” and most significantly, “Town Brooke Commons.” (Exhibit C, pp. 6-8). Therefore, the new interpretation of § 8-30g(1)(3) relied upon by DOH to deny New Canaan’s Application is totally contrary to its own past practice and as a result, completely arbitrary.

III. CONCLUSION

For the reasons above, the Town feels strongly that Section 8-30g(1)(3) simply does not say what DOH believed it to say, and past practice further reinforces that DOH’s current interpretation is incorrect. Not only does such an interpretation unfairly and arbitrarily prejudice the Town after years of effort, it also signifies an alarming and bizarre policy shift by DOH counter to the ongoing creation of affordable housing, a goal clearly encouraged by § 8-30g. For these reasons, the Town respectfully requests that DOH issue a ruling as to the applicability of § 8-30g(1)(3) to the specific circumstances in the Town of New Canaan regarding its status of affordable housing completion, as set forth in the Town’s 2022 Application to DOH, and whether the Town is in fact currently eligible for a Certificate of Affordable Housing Completion/Moratorium.

THE PETITIONER
TOWN OF NEW CANAAN



By: _____
Nicholas R. Bamonte, Esq.
Berchem Moses, P.C.
1221 Post Road East
Westport, CT 06880
Juris No.: 065850
Tel. 203-227-9545

⁵ The units recently rejected by DOH in New Canaan’s Application were completed just six months prior to when New Canaan’s first moratorium took effect. (Exhibit B, p. 4).

nbamonte@berchemmoses.com

EXHIBIT A



Dannel P. Malloy
Governor

STATE OF CONNECTICUT
DEPARTMENT OF HOUSING



Evonne M. Klein
Commissioner

May 23, 2017

Mr. Robert E. Mallozzi III
First Selectman
Town of New Canaan
Town Hall
New Canaan, Connecticut 06840

RE: Certificate of Affordable Housing
Moratorium Application under Section 8-30g CGS

Dear First Selectman Mallozzi:

In accordance with Section 8-30g of the Connecticut General Statutes and the applicable Regulations of Connecticut State Agencies under Sections 8-30g-1 through 8-30g-11, inclusive, the Department of Housing (“DOH”) has reviewed the March 30, 2017 request for issuance of a Certificate of Affordable Housing, pursuant to receipt of a Moratorium of Applicability.

In accordance with those regulations, a notice of receipt of a Completed Application was published in the Connecticut Law Journal initiating a 30 day period whereby DOH was seeking public review and input into this application. Comments were received during this time period from Open Communities Alliance and were taken into consideration.

DOH staff has reviewed the materials provided, and has determined that the Town of New Canaan does meet the requirements for receipt of a Certificate of Affordable Housing Project Completion as submitted.

A copy of the DOH HUE review is attached for your reference.

As a result of these findings, I have ordered the publication of a Notice of Issuance of a State Certificate of Affordable Housing on the next publication date of the Connecticut Law Journal. This entitles the Town of New Canaan to a Moratorium of Applicability commencing on the date of publication. Under the law, this Moratorium of Applicability shall remain in force and effect for a four year period unless earlier revoked in accordance with the law.

I would like to take this opportunity to thank you and the Town of New Canaan for continuing to address the affordable housing needs in your community. Should you or your staff have any questions with regard to this notification, please do not hesitate to contact Michael Santoro at (860) 270-8171, or by email at Michael.Santoro@ct.gov.

Sincerely,



Evonne M. Klein
Commissioner

Enclosure



Dannel P. Malloy
Governor

STATE OF CONNECTICUT
DEPARTMENT OF HOUSING



Evonne M. Klein
Commissioner

To: The File

From: Laura Watson, Economic and Community Development Agent

Date: May 19, 2017

RE: New Canaan Moratorium Application: Calculation of HUE points for the March 30, 2017 Application

Calculation of Housing Unit Equivalent (HUE) Points

Restriction:	80% AMI	\$142,800 AMI <u>X 0.80</u> \$114,240
	60% AMI	\$142,800 AMI <u>X 0.60</u> \$85,680
	50% AMI=	\$142,800 AMI <u>X 0.50</u> \$71,400
	25% AMI=	\$142,800 AMI <u>X 0.25</u> \$35,700
HUE's	80% of SMI	80% of \$91,600 = \$73,280
	60% of SMI	60% of \$91,600 = \$54,960
	40% of SMI	40% of \$91,600 = \$36,640

Under Connecticut General Statute 8-30g(l)(7) HUEs are awarded for dwelling units which were (A) newly-constructed units in an affordable housing development, as that term was defined at the time of the affordable housing application, for which a certificate of occupancy was issued after July 1, 1990, or (B) newly subjected after July 1, 1990, to deeds containing covenants or restrictions which require that, for at least the duration required by subsection (a) of this section for set-aside developments on the date when such covenants or restrictions took effect, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as affordable housing for persons or families whose income does not exceed eighty percent of median income.

A. Avalon at New Canaan – Avalon Drive East and West

104 Unit – 21 affordable units at 80% or below area median income; 83 market rate units

Project qualifies for HUE's as 20% @ 80% AMI for 20 years: See PA 00-206, which requires that you look at the project at the time the project was originally proposed; "the lesser of test" as per PA 95-280 (effective July

6,1995) did not exist when the project was first proposed and should not be applied relative to consideration for calculating HUE points. Along these same lines, the definition of a set-aside development did not exist prior to 2000, but the interpretation is that any project which would have been eligible to use 8-30g under the definition at the time it was originally proposed should be considered a set-aside development, and treated as such.

Therefore, the project should receive points for the market rate units in accordance with those detailed in 8-30g (l)(6) and should receive both the 0.25 points per market rate unit, and the bonus of twenty-two percent times the total points awarded.

83 rented market rate units = HUE @.25 pts each

83 units @ .25 pts = **20.75 pts**

21 family rented units @ 80% AMI = HUE @ 1.5 pts each

21 units @ 1.5 pts = **31.5 pts**

20.75 pts + 31.5 pts = **52.25 pts**

52.25 pts @ .22 bonus pts = **11.495 pts**

52.25 pts + 11.495 pts = **63.745 pts**

Total HUE pts for Avalon at New Canaan= 63.745 pts

B. Schoolhouse Apartments – 156 South Avenue

October of 1990 Planning and Zoning reviewed an application from Schoolhouse Apartments for 41 residential units, 30 one bedroom and 10 efficiencies and a 2 bedroom for a superintendent – moratorium application states that the superintendent apartment is not part of the application and the apartments are elderly. Project qualifies for HUE's as 20% @ 80% AMI for 20 years See PA 00-206, which requires that you look at the project at the time the project was originally proposed; "the lesser of test" as per PA 95-280 (effective July 6, 1995) did not exist when the project was first proposed and should not be applied relative to consideration for calculating HUE points. (Public Act 95-280 also revised the definition of Affordable Housing Development to be applications received on or after July 6, 1995 to be 25% of units to be affordable for 30 years. Prior to that it was 20% of the units affordable for 20 years).

40 elderly units @ 80%AMI = HUE @ .50 pts each

40 elderly units @ .5 pts each = **20 pts**

Total HUE pts for Schoolhouse Apartments = 20 pts

C. New Canaan Group Home -162 South Avenue

Planning and Zoning Approved January 1998 so "the lesser of test" as per PA 95-280 (effective July 6, 1995) did exist when the project was first proposed and should be applied relative to consideration for calculating HUE points. Loan approved on 3/16/2000 and in effect for 40 years; a HUD 811 project - Section 811 requires each person to be at very low income which is approximately 50% of AMI which equals \$46,000

(The project also adheres Public Act 00-206 which states as of June 1, 2000 not less than 30% of units in a set-aside shall be deed restricted for 40 years)

Because Section 811 requires each person to be at very low income which is approximately 50% of AMI which equals \$46,000.....

80% of SMI: 80% of \$91,600 = \$73,280 (for a family of four) (70 % one person, 80% two person,90% three person): Therefor \$73,280 * .7 (for one person) = \$51,296

60% of SMI 60% of \$91,600 = \$54,960 (for a family of four) Therefore \$54,960* .7 = \$38,472

Therefore, because there can be people making above \$38,472 a year (but below \$46,000) the 80% of area median income level would be utilized for HUE points (1.5 HUE pts.) (people making less than \$46,000 but more than \$38,472)

1 family unit (6 beds in one home for disabled persons or families) @80% SMI = HUE @ 1.5 pts each
1 family unit a@ 1.5pts = **1.5 pts**

Total HUE pts for New Canaan Group Home = 1.5 pts

D. Mill Apartments – 41 Millport Avenue

C of O - 7/14/2010 – 1/24/2011 – As per Public Act 00-206 the HANC has agreed to restrict the development with 15% of the units at the 60% SMI and the remainder at the 80% SMI. 8-30g income levels are in effect for at least 40 years (Public Act 00-206). A resolution by the HANC and a "Housing Affordability Plan" are filed on the land records, to secure this commitment. In addition, "the lesser of test" as per PA 95-280 (effective July 6, 1995) did exist when the project was first proposed and should be applied relative to consideration for calculating HUE points.

(15% at 60% below)6 family rental units at 60% SMI = HUE @ 2 pts each
6 units @ 2 pts each = 12 pts

(remainder at 80% or below)34 family rental units at 80% SMI = HUE @ 1.5 pts each
34 units @ 1.5 pts each = 51 pts

Total HUE pts for Mill Apartments (41 Millport Avenue) = 63 pts

E. Millport Apartments – 33 Millport Avenue

"The lesser of test" as per PA 95-280 (effective July 6, 1995) did exist when the project was first proposed and should be applied relative to consideration for calculating HUE points. Only two of the 18 family rental units within Building 1 at 33 Millport Avenue are being claimed in this Application; 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.

2 family rental units at 80% SMI = HUE @ 1.5 pts each
2 units @ 1.5 pts each = 3.0 points

Total HUE pts for Millport Apartments (33 Millport Avenue) = 3 pts

TOTAL HUE for New Canaan's March 30, 2017 Moratorium Application

A + B + C + D + E = total HUEs

63.745+20 +1.5 +63 +3 = 151.245 HUE's

Target HUE's for Moratorium = 151.02 HUE's

New Canaan is eligible at this time.

DEPARTMENT OF HOUSING

**Notice of Issuance of a Certificate of
Affordable Housing Completion in the Town
of New Canaan**

In accordance with C.G.S. 8-30g, the Department of Housing (DOH) has issued a Certificate of Affordable Housing Completion. This certificate entitles the Town of New Canaan to a Moratorium of Applicability with regard to said statute. The effective date of this moratorium is on the date of publication in the Connecticut Law Journal, and will remain in effect, unless revoked in accordance with the statute for a four year period. For additional information, please call or write to Michael C. Santoro, Community Development Specialist, DOH, 505 Hudson Street, Hartford, CT 06106, (860) 270-8171.

EXHIBIT B



STATE OF CONNECTICUT
DEPARTMENT OF HOUSING



October 18, 2022

Mr. Kevin J. Moynihan
First Selectman
Town of New Canaan
77 Main Street
New Canaan, CT 06840

RE: Certificate of Affordable Housing Project Completion/Moratorium Application under Section 8-30g CGS

Dear First Selectman Moynihan:

In accordance with Section 8-30g of the Connecticut General Statutes (“C.G.S.”) and the applicable Regulations of Connecticut State Agencies under Sections 8-30g-1 through 8-30g-11, inclusive, the Department of Housing (“DOH”) has reviewed the application received by DOH on July 21, 2022, from the Town of New Canaan for issuance of a Certificate of Affordable Housing Project Completion (aka a “Moratorium”).

In accordance with those regulations, a notice of receipt of a Completed Application was published in the Connecticut Law Journal initiating a 30-day period whereby DOH sought public review and input into the Town of New Canaan’s application. Comments were received from two sources and taken into consideration during this time period.

DOH staff has reviewed the application and comments received and has determined that the Town of New Canaan’s application does not meet the requirements for the issuance of a Certificate of Affordable Housing Project Completion as submitted. Please see the attached memorandum detailing the methodology used to calculate the housing unit-equivalent (“HUE”) points.

I would like to take this opportunity to thank you and the Town of New Canaan for continuing to address the affordable housing needs in your community. If we can be of assistance or should you or your staff have any questions with regard to this decision, please do not hesitate to contact Michael Santoro by email at Michael.Santoro@ct.gov.

Sincerely,

Seila Mosquera-Bruno
Commissioner



Ned Lamont
Governor

STATE OF CONNECTICUT
DEPARTMENT OF HOUSING



Seila Mosquera-Bruno
Commissioner

To: The File
From: Michael Santoro, Director, OPRAHs
Date: October 13, 2022
RE: New Canaan Moratorium Application: Calculation of housing unit-equivalent points (“HUE” or “HUEs” or “Points”) for the July 21, 2022 Application (October 18, 2022 – 90 days)

Calculation of HUE Points

Restriction:	80% AMI	\$180,900 AMI <u>X 0.80</u> \$144,720
	60% AMI	\$180,900 AMI <u>X 0.60</u> \$108,540
	50% AMI=	\$180,900 AMI <u>X 0.50</u> \$90,450
	25% AMI=	\$180,900 AMI <u>X 0.25</u> \$45,225

HUEs	80% of SMI	80% of \$112,600 = \$90,080
	60% of SMI	60% of \$112,600 = \$67,560
	40% of SMI	40% of \$112,600 = \$45,040

Under Connecticut General Statutes (“CGS”) Section 8-30g(l)(7), “Points shall be awarded only for dwelling units which (A) were newly-constructed units in an affordable housing development, as that term was defined at the time of the affordable housing application, for which a certificate of occupancy was issued after July 1, 1990, (B) newly subjected after July 1, 1990, to deeds containing covenants or restrictions which require that, for at least the duration required by subsection (a) of this section for set-aside developments on the date when such covenants or restrictions took effect, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as affordable housing for persons or families whose income does not exceed eighty percent of median income. . .”

Prior to Public Act (“PA”) 95-280, 20% of the dwelling units in an Affordable Housing Development had to be deed restricted and remain affordable for at least 20 years.

The definition of a set-aside development did not exist prior to June 1, 2000, but the interpretation is that any project which would have been eligible to use CGS 8-30g under the definition at the time it was originally proposed should be considered a set-aside development, and treated as such. For projects where the application for such development was filed after July 6, 1995, the set-aside development (which adheres to PA 95-280) shall be awarded .25 points per each market rate unit (as indicated in PA 00-206).

For projects where the application was filed before July 6, 1995 (and after July 1, 1990), a set-aside development containing family units which are rental units shall be awarded additional points equal to twenty-two percent of the total points awarded to such development.

PA 95-280 (for applications received on or after July 6, 1995) defines "Affordable Housing Development" as a proposed housing development (A) which is assisted housing or (B) in which not less than 25% of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that such dwelling units be sold or rented at, or below, prices which will preserve the units as affordable housing, as defined in CGS 8-39a, for persons and families whose income is less than or equal to 80% of the area median income or 80% of the state median income, whichever is less, for at least thirty years after the initial occupation of the proposed development.

PA 99-261 (which took effect on June 29, 1999) states "Affordable Housing Development" means a proposed housing development (A) which is assisted housing or (B) in which not less than 25% of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least thirty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at or below, prices which will preserve the units as affordable housing. Of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than ten percent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty percent of the area median income or sixty percent of the state median income, whichever is less, and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty percent of the area median income or eighty percent of the state median income, whichever is less."

PA 00-206 (As of June 1, 2000) "Set-aside Development" means a development in which not less than thirty percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to eighty percent of the median income. In a set-aside development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than 15% of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to 60% of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons/families whose income is less than or equal to 80% median income.

HUE Points are calculated as follows:

Market-rate unit in set-aside development = .25 pts

Elderly unit @ 80% SMI or less = .50 pts

Owned family unit @ 80% SMI or less = 1.0 pts

Owned family unit @ 60% SMI or less = 1.5 pts

Owned family unit @ 40% SMI or less = 2.0 pts

Rented family unit @ 80% SMI or less = 1.5 pts

Rented family unit @ 60% SMI or less = 2.0 pts

Rented family unit @ 40% SMI or less = 2.5 pts

Bonus Housing Unit – Equivalent Points

- **Family units, owned or rented containing three or more bedrooms (.25 per unit)**
- **Family units within an approved Incentive Housing Development (.25 per unit) -**
- **If at least 60% of the total Affordable units above are Family units, then each Elderly unit receives .5 per unit**

A. Millport Apartments – 33, 35, 59 and 61 Millport Avenue (71 of 73 total units claimed)

This 73- unit 8-30g development was originally approved by the Planning and Zoning Commission in 2015 (Deed Restriction/Affordability Plan filing info: Phase 1: Notice of Ground Lease – Vol 950 / Pgs 297-303; Open-end Leasehold Mortgage Deed – Vol 950 / Pgs 503-525; Phase 2: Open-End Leasehold Mortgage Deed – Vol 973 / Pgs 951- 967; Recorded Covenant: Phase 1: Land Use Restriction Agreement – Vol 950 Pgs 312-335; Phase 2: Land Use Restriction Agreement - Vol 973/ Pgs 694-716; Financing/ Assistance Agreement: Phase 1: ELIHC with CHFA – Vol 950 / Pgs 304-311; Phase 2: ELIHC with CHFA – Vol / Pgs) and is comprised of 100% affordable units for at least 40 years (Millport Avenue New Canaan, Connecticut Affordability Plan Phase II/73 Apartment Homes Revised Submission, Draft January 2015, Page 2, references the income limits under 8-30g and the 40-year affordability period). Because two of the units had been claimed towards New Canaan’s 1st Application for a Certificate of Affordable Housing Project Completion in 2017, 71 of the 73 units are claimed in the present application. The property is owned and operated by the New Canaan Housing Authority (“HANC”). Certificates of Occupancy for the units were issued 12/9/2016, 2/14/2018, and 3/28/2018. Person or entity responsible for compliance: Westmount Management, 36 Park Place, Branford, CT 06405.

In accordance with CGS Section 8-30g (l)(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. According to the materials provided, Certificates of Occupancy were issued for 59 Millport Avenue (Building 3), consisting of twenty (20) affordable units on February 14, 2018 and for 61 Millport Avenue (Building 4), consisting of twenty (20) affordable units on March 28, 2018.

This development falls under PA 00-206 (As of June 1, 2000) - “Set-aside Development” means a development in which not less than thirty percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty percent or less of their

annual income, where such income is less than or equal to eighty percent of the median income. In a Set-aside Development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than 15% of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to 60% of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons/families whose income is less than or equal to 80% median income.

“The lesser of test” as per PA 95-280 (effective July 6, 1995) did exist when the project was first proposed and should be applied relative to consideration for calculating HUE points. The CHFA Low Income Housing Tax Credit (LIHTC) recorded documents reference all units being at 60% AMI. However, the recorded deed restrictions (Open-End leasehold Mortgage Deed Vol 950/Pgs 503—525) and Open End Leasehold Mortgage Deed Vol 950/Pgs 951-967) reference the Millport Avenue New Canaan, Connecticut Affordability Plan Phase II/73 Apartment Homes Revised Submission Draft January 2015, Page 2, under which 15% of the 73 units are to be rented to households who are equal to or less than 60% of the median income as defined in 8-30g-1(10) of the Regulations of Connecticut State Agencies. All other units will be rented to households who are equal to or less than 80% of the median income as defined in 8-30g-1(10) of the Regulations of Connecticut State Agencies, thereby requiring utilization of the “lesser of state or median income” test which requires utilizing state median income in this case.

Income eligibility for these units are as follows, in accordance with the ELIHC recorded in Volume 973 Page 722 of the Land Records of the Town of New Canaan:

# of Units	# of Bedrooms	AMI Affordability	SMI Equivalent	HUE's Per Unit	Total HUE's
1	1	25% of AMI	40% of SMI	2.5	2.5
3	1	50% of AMI	80% of SMI	1.5	4.5
14	1	60% of AMI	80% of SMI	1.5	21.0
4	2	25% of AMI	40% of SMI	2.5	10.0
6	2	50% of AMI	80% of SMI	1.5	9.0
6	2	60% of AMI	80% of SMI	1.5	9.0
2	3	25% of AMI	40% of SMI	2.5	5.0
2	3	50% of AMI	80% of SMI	1.5	3.0
2	3	60% of AMI	80% of SMI	1.5	3.0
40 total units				TOTAL	67.0

Additional HUEs for 3 plus bedroom units: 0.25 HUE's = 6 units at 0.25 = 1.5 HUE's

Total HUE points = 68.5 pts

CGS 8-30g(1)(8) states that “Points shall be subtracted, applying the formula in subdivision (6) of this subsection, for any affordable dwelling unit which, on or after July 1, 1990, was affected by any action taken by a municipality which caused such dwelling unit to cease being counted as an affordable dwelling unit.” In 2015, the New Canaan Planning and Zoning Commission approved the tear-down of 22 of the Millport apartments, in six buildings that dated from the 1980s and construction of 73 new affordable dwelling units in four buildings. This property is owned by the HANC and includes an additional parcel at 33 Millport Avenue that contained a two-family house that was purchased by HANC and merged with the adjoining land.

The construction took place in two phases. Phase 1 in 2016 included the first two structures at 33 Millport Avenue (18 units) and 35 Millport Avenue (15 units) and was included in their first application for a

Certificate of Affordable Housing Project Completion. Phase II involved the second two buildings, 59 Millport Avenue, and 61 Millport Avenue each contain 20 units and were completed in 2018.

Thirty-three (33) new units were constructed as part of Phase 1, which again was used in the initial application for a Certificate of Affordable Housing Project Completion. Twenty-two (22) units were demolished as part of that initial Phase 1.

CGS 8-30g(l)(8) states that that “Points shall be subtracted, applying the formula in subdivision (6) of this subsection, for any affordable dwelling unit which, on or after July 1, 1990, was affected by any action taken by a municipality which caused such dwelling unit to cease being counted as an affordable dwelling unit.”

The units that were demolished were restricted to households at or below 80% of Area Median Income. According to the formula in subdivision (6) of CGS 8-30g(l), the demolished units would not have qualified for any housing unit equivalent points.

Units Demolished:

# of Units	AMI Affordability	SMI Equivalent	HUE's Per Unit	Total HUE's Deducted
22	80% of AMI	Not Equivalent	0.0	0.0
			TOTAL	0.0

Total HUEs for units claimed at Millport Apartments less HUEs to be subtracted under the formula: 68.5 HUEs minus 0.0 HUEs = Total HUEs for claimed units at Millport Apartments = 68.5 HUEs

B. Canaan Parish – 186 Lakeview Avenue

This 100-unit 8-30g development was originally approved by a special permit on September 17, 2018 by the New Canaan Planning and Zoning Commission for the demolition of 60 existing units and construction of 100 new units of multi-family housing at 186 Lakeview Ave., New Canaan, CT, which approval is filed in the New Canaan Land Records in Volume 992, Page 481. This approval ties the development to Canaan Parish Lakeview Avenue, New Canaan, Connecticut Affordability Plan for Canaan Parish Redevelopment, July 2018, Submitted by Canaan Parish Redevelopment, LLC to the New Canaan Planning and Zoning Commission, (Deed Restriction/Affordability Plan filing info: Affordability Plan – Vol 1052 / Pgs 176-200). The HANC Resolution 21-01 Canaan Parish 8-30g Income Limits Commitment (Book 1052 page176) further clarifies the median income intention in the Canaan Parish Lakeview Avenue, New Canaan, Connecticut Affordability Plan for Canaan Parish Redevelopment, July 2018, Submitted by Canaan Parish Redevelopment, LLC to the New Canaan Planning and Zoning Commission, Page 2.

Sixteen (16) units in Canaan Parish are claimed in the present application. The property is owned by the Town of New Canaan and operated by HANC and Canaan Parish Redevelopment LP. Certificates of Occupancy for the 16 units were issued on 10/23/2021.

This development falls under PA 00-206 (As of June 1, 2000) - “Set-aside Development” means a development in which not less than thirty percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to eighty percent of the median income. In a Set-aside Development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than 15% of all dwelling units in the development shall be sold or rented

to persons and families whose income is less than or equal to 60% of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons/families whose income is less than or equal to 80% median income.

“The lesser of test” as per PA 95-280 (effective July 6, 1995) did exist when the project was first proposed and should be applied relative to consideration for calculating HUE points. HANC Resolution 21-01 Canaan Parish 8-30g Income Limits Commitment (Book 1052 page176) further clarifies the median income intention in the Canaan Parish Lakeview Avenue, New Canaan, Connecticut Affordability Plan for Canaan Parish Redevelopment, July 2018, Submitted by Canaan Parish Redevelopment, LLC to the New Canaan Planning and Zoning Commission, Page 2.

# of Units	# of Bedrooms	SMI Equivalent	HUE's Per Unit	Total HUE's
8	1 & 2	60% of SMI	2.0	16.0
8	3	60% of SMI	2.0	16.0
			TOTAL	32.0

Additional HUEs for 3 plus bedroom units: 0.25 HUE's = 8 units at 0.25 = 2.0 HUE's

Total HUE points in the 2022 Moratorium application being claimed: 34.0 Points

The construction is being undertaken in two phases; Phase 1 consists of the construction of one sixty (60) unit building, while Phase 2 consists of the construction of one forty (40) unit building.

CGS 8-30g(l)(8) does apply and states “Points shall be subtracted, applying the formula in subdivision (6) of this subsection, for any affordable dwelling unit which on or after July 1, 1990, was affected by any action taken by a municipality which caused such dwelling unit to cease being counted as an affordable dwelling unit.”

The units that were demolished were restricted to households at or below 80% of Area Median Income. According to the formula in subdivision (6) of C. G. S. 8-30g(l), these units would not have qualified for any housing unit equivalent points.

Units Demolished:

# of Units	AMI Affordability	SMI Equivalent	HUE's Per Unit	Total HUE's Deducted
60	80% of AMI	Not Equivalent	0.0	0.0
			TOTAL	0.0

Total HUE pts for units claimed at Canaan Parish less HUEs to be subtracted under the formula. 34 HUEs minus 0.0 HUEs = Total HUE's for claimed units at Canaan Parish = 34.0 HUE Points

SUMMARY:

PROJECT NAME	HUE POINTS
Millport Apartments	68.5
Canaan Parish	34.0
Total	102.5

New Canaan needs a minimum of 151.02 HUEs (per the latest census numbers 2010: 7,551 dwelling units x 2% = 151.02 points for New Canaan), therefore New Canaan is NOT ELIGIBLE based on the HUEs claimed and eligible in the application.

If additional eligible affordable units within the municipality may be available to be claimed, the Town of New Canaan may elect to submit a new application to the Department of Housing.

EXHIBIT C



Ned Lamont
Governor

STATE OF CONNECTICUT
DEPARTMENT OF HOUSING



Seila Mosquera-Bruno
Commissioner

June 2, 2022

Ms. Tara Carr
First Selectman
Town of Brookfield
100 Pocono Road
Brookfield, CT 06804

RE: Certificate of Affordable Housing
Moratorium Application under Section 8-30g CGS

Dear First Selectman Carr:

In accordance with Section 8-30g of the Connecticut General Statutes and the applicable Regulations of Connecticut State Agencies under Sections 8-30g-1 through 8-30g-11, inclusive, the Department of Housing (“DOH”) has reviewed the March 10, 2022 request for issuance of a Certificate of Affordable Housing, pursuant to receipt of a Moratorium of Applicability.

In accordance with those regulations, a notice of receipt of a Completed Application was published in the Connecticut Law Journal initiating a 30-day period whereby DOH sought public review and input into this application. Comments were received during this time period from Connecticut Legal Services and Hinkley Allen, and were taken into consideration.


DOH staff has reviewed the materials provided, and has determined that the Town of Brookfield does meet the requirements for receipt of a Certificate of Affordable Housing Project Completion as submitted.

A copy of the DOH HUE review is attached for your reference.

As a result of these findings, I have ordered the publication of a Notice of Issuance of a State Certificate of Affordable Housing on the next publication date of the Connecticut Law Journal. This entitles the Town of Brookfield to a Moratorium of Applicability commencing on the date of publication. Under the law, this Moratorium of Applicability shall remain in force and effect for a four year period unless earlier revoked in accordance with the law.

I would like to take this opportunity to thank you and the Town of Brookfield for continuing to address the affordable housing needs in your community. Should you or your staff have any questions with regard to this notification, please do not hesitate to contact Michael Santoro by email at Michael.Santoro@ct.gov or Laura Watson at Laura.Watson@ct.gov.

Sincerely,


Seila Mosquera-Bruno
Commissioner



STATE OF CONNECTICUT
DEPARTMENT OF HOUSING



To: The File

From: Laura Watson, Economic and Community Development Agent

Date: June 2, 2022

RE: Brookfield Moratorium Application: Receipt date of March 10, 2022 (Published in Law Journal March 22, 2022; June 8, 2022 is the 90-day due date)

Calculation of Housing Unit Equivalent (HUE) Points

Restriction:

25% AMI=	\$134,700 AMI
	<u>X 0.25</u>
	\$33,675

50% AMI=	\$134,700 AMI
	<u>X 0.50</u>
	\$ 67,350

60% AMI=	\$134,700 AMI
	<u>X 0.60</u>
	\$ 80,820

80% AMI=	134,700 AMI
	<u>X 0.80</u>
	\$107,760

HUE's	80% SMI	80% of \$112,600 = \$90,080
	60% SMI	60% of \$112,600 = \$67,560
	40% SMI	40% of \$112,600= \$45,040

Under Connecticut General Statutes ("CGS") Section 8-30g(l)(7), HUEs are awarded for dwelling units which were (A) newly-constructed units in an affordable housing development, as that term was defined at the time of the affordable housing application, for which a certificate of occupancy was issued after July 1, 1990, or (B) newly subjected after July 1, 1990, to deeds containing covenants or restrictions which require that, for at least the duration required by subsection (a) of this section for set-aside developments on the date when such covenants or restrictions took effect, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as affordable housing for persons or families whose income does not exceed eighty percent of median income.

Prior to Public Act 95-280, 20% of the dwelling units in an Affordable Housing Development had to be deed restricted and remain affordable for at least 20 years.

The definition of a Set-aside Development did not exist prior to June 1, 2000, but the interpretation is that any project which would have been eligible to use CGS 8-30g under the definition at the time it was originally proposed should be considered a Set-aside Development, and treated as such. For projects where the application for such development was filed after July 6, 1995, the Set-aside Development (which adheres to Public Act 95-280) shall be awarded .25 points per each market rate unit (as indicated in Public Act 00-206). For projects where the application was filed before July 6, 1995 (and after July 1, 1990), a Set-aside Development containing family units which are rental units shall be awarded additional points equal to twenty-two percent of the total points awarded to such development.

Public Act 95-280 (for applications received on or after July 6, 1995) defines "Affordable Housing Development" as a proposed housing development (A) which is assisted housing or (B) in which not less than 25% of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that such dwelling units be sold or rented at, or below, prices which will preserve the units as affordable housing, as defined in CGS 8-39a, for persons and families whose income is less than or equal to 80% of the area median income or 80% of the state median income, whichever is less, for at least thirty years after the initial occupation of the proposed development.

Public Act 99-261 (which took effect on June 29, 1999) states "Affordable Housing Development" means a proposed housing development (A) which is assisted housing or (B) in which not less than 25% of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least thirty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at or below, prices which will preserve the units as affordable housing. Of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than ten percent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty percent of the area median income or sixty percent of the state median income, whichever is less, and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty percent of the area median income or eighty percent of the state median income, whichever is less."

Public Act 00-206 (As of June 1, 2000) "Set-aside Development" means a development in which not less than thirty percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling

units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to eighty percent of the median income. In a Set-aside Development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than 15% of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to 60% of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons/families whose income is less than or equal to 80% median income.

Brookfield Village

800 Federal Road and 7 Station Road – Extended Low-Income Housing Commitment (Book 719 Page: 799 File Number: 03158 Page: 1 -12)

48 Total Rental Family Units (one and two bedroom units indicated by DeMarco Management Corporation, March 15, 2021 email)

43 Affordable Rental Family Units
5 Market Rate Rental Family Units

48 * .30 = 14.4 or 15 affordable units
48*.15 = 7.2 or 8 affordable units at 60% of SMI (meets the “lesser of” test)

As indicated in Public Act 00-206, “Set-aside Development” means a development in which not less than thirty percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to eighty percent of the median income. In a Set-aside Development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than 15% of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to 60% of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons/families whose income is less than or equal to 80% median income. DeMarco’s letter indicates they are using AMI, but we need to use SMI because the “lesser of” test applies. Therefore, AMI was converted into SMI and applied to the appropriate income categories. Our review indicates that this development meets the definition of a set-aside development and the market rate units may receive .25 points each.

28 rental family units @ 60% AMI (per DeMarco Mgt. Corp.) = HUE @ 80% SMI = 1.50 points each
28 units @ 1.50 points = 42 points

12 rental family units @ 50% AMI (per DeMarco Mgt. Corp.) = HUE @ 60% SMI = 2 points each
12 units @ 2 points = 24 points

3 rental family units @ 25% AMI (per DeMarco Mgt. Corp.) = HUE @ 40% SMI = 2.50 points each
3 units @ 2.50 points = 7.50 points

5 market rate set-aside units = HUE @ .25 point each
5 units @ .25 point = 1.25 point

42 points + 24 points + 7.5 points + .75 points = **74.75 points total**

Carlin's Way 1 and 3 Carlin's Way

5 Total Family Units owner occupied
2 Affordable Family Units owner occupied
3 Market Rate Units owner occupied

5*.30 = 1.5 or 2 affordable units
5 units – 2 affordable units = 3 market rate units

Affordable Units
5*.15 = .75 or at least 1 unit at 60%

Our review indicates that this project meets the "lessor of" test and will utilize the 2022 state median income of \$112,600. As indicated in the Statutory Warranty Deeds, 1 Carlins Way (July 2, 2008, Volume 587, Pg. 263-265) and 3 Carlins Way (December 13, 2007, Volume 578, Pg. 798-800) were conveyed specifically subject to the provisions of the affordability plan on file with the Town of Brookfield (August 2, 2007, Volume 570, Pg. 938-963). As indicated in both deeds, the dwelling units are affordable housing dwelling units within a set aside development as defined in CGS 8-30g and in accordance with applicable Regulations of Connecticut State Agencies that were in effect on the date of the original application for initial local approval on July 24, 2007. By way of summary, the affordability plan calls for thirty percent (30%) of the homes to be designated as "Housing Opportunity Units" that will meet the criteria for "affordable housing" as defined in CGS 8-30g. As amended by the legislature effective October 1, 2000, CGS 8-30g requires that for this application fifteen percent (15%) of the units must be affordable for 40 years to families earning eighty percent (80%) or less of the median income for the greater Danbury area or the State median income, whichever is less, and at least fifteen percent (15%) of the units must be affordable to those earning sixty percent (60%) or less of either the area or State median income, whichever is less. This development meets the definition of an affordable housing development.

2 owner occupied family unit @ 60% SMI (per deed restrictions)= HUE @ 60% SMI = 1.50 point each
2 units @ 1.50 point = **3 points**

3 market rate set-aside units = HUE @ .25 point each
3 units @ .25 point = **.75 points**

3 points + .75 points = **3.75 points total**

Hollow Drive

12 Homes with 4 Affordable; only 1 Affordable Unit completed at time of this application – 4 Hollow Drive

12 Total Family Units owner occupied
4 Affordable Family Units owner occupied
8 Market Rate Units owner occupied

12*.30 = 3.6 or 4 affordable units
12 units – 4 affordable units = 8 market rate units

Affordable Units

12*.15 = 1.8 or at least 2 units at 60%

Our review indicates that this project meets the “lessor of” test and will utilize the 2022 state median income of \$112,600. 4 Hollow Drive is a three-bedroom owner-occupied unit restricted to 60% of state Median Income for a period of 40 years. As indicated in the Statutory Warranty Deed, 4 Hollow Drive (August 1, 2019, Volume 757, Pg. 351) is conveyed specifically subject to the provisions of the affordability plan as on file with the Town of Brookfield (Volume 713, Pg. 657). As indicated in the deed for 4 Hollow Drive, this dwelling unit is an affordable housing dwelling unit within a set aside development as defined in CGS 8-30g and in accordance with applicable regulations. As amended by the legislature effective October 1, 2000, CGS 8-30g requires that to be considered a set-aside development, fifteen percent (15%) of the units must be affordable for 40 years to families earning eighty percent (80%) or less of the median income for the statistical area or the State median income, whichever is less, and at least fifteen percent (15%) of the units must be affordable to those earning sixty percent (60%) or less of either the area or State median income, whichever is less. Therefore, at a point later in time, this development may meet the definition of an affordable housing development upon confirmation of income when the units are complete. This would allow market rate set-aside units for HUE @ .25 point each for affordable units to be eligible to be claimed in a later application. Because the only unit complete to date is 4 Hollow Drive, the following points will apply:

1 owner occupied family unit @ 60% SMI (per deed restriction)= HUE @ 60% SMI = 1.50 point
1 units@ 1.50 point = **1.50 points**

139 Tower Road

Our review indicates that this project meets the “lessor of” test and will utilize the 2022 state median income of \$112,600. As indicated in the Statutory Warranty Deed (November 26, 2008, Volume 593, Pg. 0001), 139 Tower Road was conveyed as an “affordable housing unit” as defined in CGS 8-30g and the owner of 139 Tower Road shall sell or transfer said property only to certain eligible families or households as specified in CGS 8-30g as amended by Public Act 99-261. Applicable income limits shall be determined by the Connecticut Department of Housing and the U.S. Department of Housing Urban Development (“HUD”) and conveyed specifically subject to the provisions of the affordability plan as on file with the Town of Brookfield. As indicated in the deed for 139 Tower Road, this dwelling unit is two-bedroom owner occupied affordable housing dwelling unit at 80% of area or statewide median income, for a period of 40 years.

1 owner occupied family unit @ 80% SMI (per deed restriction)= HUE @ 80% SMI = 1.00 point
1 units@ 1.00 point = **1.00 point**

Mill River

22 Total Family Units owner occupied
7 Affordable Family Units owner occupied
15 Market Rate Units owner occupied

$22 * .30 = 6.6$ or 7 affordable units
22 units – 7 affordable units = 15 market rate owner occupied units

Our review indicates that this project meets the “lessor of” test and will utilize the 2022 state median income of \$112,600. As indicated in the Affordability Plan (June 15, 2005, Volume 0514, Pages 0688-0707), referenced by individual deed, thirty percent (30%) of the homes in the Condominium will be designated as “Housing Opportunity Units” that will be the criteria for “affordable housing” as defined in CGS 8-30g, as amended to date. At least 30% of the units in the Condominium must be affordable for forty (40) years for families earning eighty percent (80%) or less of the median income for the Brookfield area (Danbury PMSA) or the State median income, whichever is less. This property is not a set-aside development as there are no properties at 60% median income.

7 owner occupied family unit @ 80% SMI (per deed restriction)= HUE @ 80% SMI =1 point
7 units @ 1.00 point = **7.00 points**

20 Orchard Place

30 Total rental age restricted units
9 Affordable rental age restricted units
21 Market rate rental age restricted units

$30 * .30 = 9$ Affordable rental age restricted units
30 units – 9 affordable units = 21 market rate rental age restricted units

Our review indicates that this project meets the “lessor of” test and will utilize the 2022 state median income of \$112,600. As indicated in the Deed Restriction (June 15, 2005, Volume 0556, Pages 0757-0758), thirty percent (30%) of the dwelling units of Orchard Place Apartments will be designated as “Affordable Units” that will meet the criteria for “affordable housing” as defined in CGS 8-30g and 8-39a. In addition these units defined as “affordable” will be deed restricted as “active adult” requiring that tenants’ age will be restricted to 55 years or older. All “Designated Age Restricted” units will be occupied by tenants who meet the affordable housing requirements as defined by CGS 8-30g and 8-30a. The income restriction will be at 80% of State median income and will run with the land for a period of 40 years.

9 rental elderly units @ 80% SMI (per deed restriction)= HUE @ 80% SMI = .50 point
9 units @ .50 point = **4.50 points**

Town Brooke Commons

102-unit set-aside development was filed with the Brookfield Zoning Commission on September 29, 2000 (Public Act No. 99-261) Project qualifies for HUE's as 25% for 30 years – of the dwelling units conveyed by deeds containing covenants or restrictions, a number not less than 10% of all dwelling units in the development (11 units) shall be sold or rented to persons and families whose income is less than or equal to sixty per cent of the area median income or sixty percent of the state median income , whichever is less, and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions (15) shall be sold or rented to persons and families whose income is less than or equal to eighty percent of the area median income or eighty percent of the state median income, whichever is less. See PA 00-206, which requires looking at the project at the time the project was originally proposed; “the lesser of test” as per PA 95-280 (effective July 6,1995) did exist when the project was first proposed and should be applied relative to consideration for calculating HUE points. Along these same lines, the definition of a set-aside development did not exist prior to June 1, 2000, but the interpretation is that any project which would have been eligible to use CGS 8-30g under the definition at the time it was originally proposed should be considered a set-aside development, and treated as such. (set-aside developments containing family units which are rental units shall be awarded .22 of the total points awarded to such development, provided the application for such development was filed with the commission prior to July 6, 1995).

Therefore, the project should receive points for the market rate units in accordance with those detailed in 8-30g (l)(6) and should receive the 0.25 points per market rate unit, however is not eligible for the bonus of twenty-two percent times the total points awarded.

Total number of units = 102

$102 * .25 = 25.5 = 26$ Affordable Units total

$102 - 26 = 76$ Market Rate Units

Of the 26 Affordable Units:

$102 * .10 = 10.2 = 11$ units at 60% SMI

26 units – 11 units = 15 units at 80% of SMI

Unit breakdown:

76 rented market rate units = HUE @.25 pts each

76 units @ .25 pts = 19 pts

15 family rented units @ 80% SMI = HUE @ 1.5 pts each

15 units @ 1.5 pts = 22.5 pts

11 family rented units at 60% SMI = HUE @2.0 pts each

11 units @ 2 pts = 22 pts

Total HUE pts Available for this development: 63.50 pts

Total HUE pts claimed May 10, 2017 application: 23.25 pts

Total Remaining HUE pts claimed this application: 40.25

Bonus Housing Unit – Equivalent Points

- **Family units, owned or rented containing three or more bedrooms (.25 per unit)-** Tax Assessors records indicate 3 in these affordable single-family owner occupied units:
 - 1 Carlin’s Way @.25 bonus point = **.25 bonus point**
 - 3 Carlin’s Way @.25 bonus point = **.25 bonus point**
 - 4 Hollow Drive @ .25 bonus point = **.25 bonus point**

- **Family units within an approved Incentive Housing Development (.25 per unit) -**
 - 43 affordable rental family units at Brookfield Village @ .25 Bonus point = **10.75 bonus points**

- **If at least 60% of the total Affordable units above are Family units, then each Elderly unit receives .5 per unit – 60% of the total Affordable units above were Family units.**

SUMMARY:

PROJECT NAME	HUE POINTS
Brookfield Village	74.75
Carlin’s Way	3.75
Hollow Drive	1.50
139 Tower Road	1.00
Mill River	7.00
20 Orchard Place	4.50
Town Brooke Commons	40.25
Bonus 3 Bedroom	.75
Bonus Incentive Housing Development	10.75
Bonus Elderly	4.50
Total	148.75

Brookfield needs at least 131.24 HUES (2% *6,562 = 131.24 points to be eligible), therefore Brookfield is eligible based on HUE’s.