

**STATE OF CONNECTICUT
DEPARTMENT OF HOUSING**

In the Matter of:)
)
Petition for Declaratory Ruling)
Pursuant to General Statutes § 4-176)
Regarding Legality of Moratorium) July 29, 2019
From General Statutes § 8-30g, As)
Issued to the Town of Westport By The)
Connecticut Department of Housing,)
March, 2019)

**DENIAL OF PETITION FOR
DECLARATORY RULING**

I. BACKGROUND

On June 4, 2019, Summit Saugatuck, LLC (“Summit Saugatuck”) and Garden Homes Management Corporation (“Garden Homes”) (collectively, “Petitioners”) filed a Petition for Declaratory Ruling (the “Petition”) with the State of Connecticut, Department of Housing (“DOH”), pursuant to § 4-176 of the Connecticut General Statutes (“CGS”). The Petition requested a declaratory ruling addressing the following questions:

1. Did the Department violate Regs. Conn. State Agencies § 8-30g-6(j)(1) by processing and granting Westport’s application after the town’s November 2018 published notices of its intention to file a moratorium application with the Department of Housing failed to notify residents of their right and opportunity to petition Westport’s Representative Town Meeting or Planning and Zoning Commission for a public hearing, through the filing of a petition signed by at least 25 members?
2. Did the Department violate General Statutes § 8-30g(l)(4)(B) and Regs. Conn. State Agencies § 8-30g-6(j)(4), which require the Department to make available for public comment all parts of a Certificate application, by accepting Westport’s January 24, 2019 letters (Exhs. 10, 11), which substantively altered Westport’s claimed point totals and conceded that some of its points claims did not meet statutory requirements, but then failing to make those letters available for public comment, and failing to timely disclose them to the parties who, as of January 24, 2019, had already submitted written comments?
3. Did the Department violate General Statutes § 8-30g(l) and Regs. Conn. State Agencies § 8-30g-6 by granting moratorium points for developments for which Westport did not provide any evidence of on-going compliance with affordability restrictions, from the date of initial residential occupancy or newly-imposed affordability restrictions to the

date of the Certificate application, such as the annual rental unit § 8-30g compliance reports that each town is required to receive from each affordable housing development administrator pursuant to General Statutes § 8-30h, or periodic compliance reports that are required by all federally- or state-subsidized affordable housing programs?

4. Did the Department violate § 8-30g(a)(6) of the General Statutes by awarding 9.0 moratorium points for a development (Rotary Centennial House) for which the town did not submit evidence of a minimum “affordability period” meeting the statutory requirement for minimum duration?
5. Did the Department violate General Statutes § 8-30g(l) and Regs. Conn. State Agencies § 8-30g-6, and /or make a material factual or mathematical error, by granting 30 points for the Hidden Brook development, when Westport had only claimed 6.0 points for that development, and where the Department’s calculation was based on unidentified and never publicly-disclosed “records of the Department” as to the number and affordability characteristics of pre-existing units that were demolished when the Hidden Brook development was constructed in 1999?

Based on the following, DOH believes that (1) Petitioners do not have standing to request a declaratory ruling here and (2) the issues identified by Petitioners are not appropriate for a declaratory ruling under CGS § 4-176, and therefore the Commissioner declines to issue a declaratory ruling in this matter.

II. STATEMENT OF FACTS

1. DOH has jurisdiction to issue a Certificate of Affordable Housing Project Completion (a “moratorium”) pursuant to CGS § 8-30g(l) *et seq.*
2. The Commissioner of Housing is authorized by CGS § 8-30g(l)(11) to adopt regulations related to the moratorium process, which regulations can be found in Regulations of Connecticut State Agencies (“RCSA”) § 8-30g-1 *et seq.*
3. On December 5, 2018, pursuant to RCSA § 8-30g-6, the Town of Westport submitted an application for a moratorium (the “Application”) to DOH, which Application was determined to be complete on December 12, 2018.
4. On December 25, 2018, notice of DOH’s receipt of the Town of Westport’s Application was published in the Connecticut Law Journal.
5. RCSA § 8-30g-6(j)(1) requires a public comment period on the Application and that a copy of all such comments and responses be attached to the Application when submitted to the Commissioner. RCSA § 8-30g-6(j)(4) provides that written public comments shall be accepted by DOH after notice of publication of DOH’s receipt of a complete Application.
6. Petitioners, as well as other interested individuals and entities, submitted written comments in January, 2019 responding and objecting to the Application as part of the Application process. Said comments were considered by DOH as part of the Application review process.


7. On February 14, 2019, DOH responded specifically to Anika Singh Lemar of Yale Law School, addressing her comments concerning the notice provisions of RCSA § 8-30g-6(j)(1).
8. After extensive review of the Application and supporting materials, along with comments submitted by interested parties, DOH informed the Westport First Selectman by letter dated February 25, 2019 that it was granting a moratorium to the Town of Westport. The moratorium became effective upon publication of notice in the Connecticut Law Journal on March 5, 2019.
9. On June 4, 2019, the Commissioner of Housing received the Petition, which seeks to challenge the issuance of the moratorium granted by DOH.
10. On June 14, 2019, the Town of Westport and the Westport Planning and Zoning Commission submitted a Statement of Opposition to Petition for Declaratory Ruling.
11. On June 20, 2019, the Town of Westport Planning and Zoning Commission denied Summit Saugatuck's Text Amendment for a new zoning district, citing in part that issuance of a Certificate of Affordable Housing Completion by DOH as evidence of affordable housing opportunities within existing zoning regulations.
12. On July 10, 2019, Petitioner Summit Saugatuck submitted a Response to Town of Westport's June 14, 2019 Statement of Opposition to Declaratory Ruling Petition.
13. Petitioner Summit Saugatuck has a pending application for a 187-unit affordable rental housing development on Hiawatha Lane in Westport, filed with the Town of Westport in November, 2018. The application was filed prior to March 6, 2019, the effective date of the moratorium, and is thus unaffected by it.
14. Petitioner Summit Saugatuck also claims it owns property at 60 Charles Street in Westport, which it contends is developable in compliance with CGS § 8-30g.
15. Petitioner Garden Homes filed an application for an affordable housing development pursuant to CGS § 8-30g in 2017. The application was denied by the Town of Westport and is currently on appeal in Superior Court.
16. Petitioners have not filed any applications for affordable housing developments since the effective date of the moratorium.

III. CONCLUSIONS

1. In order to have standing to challenge the issuance of the moratorium, Petitioners must demonstrate "a specific, personal and legal interest in the subject matter of the decision, as distinguished from a general interest such as is the concern of the community as a whole," and that they were "specially and injuriously affected in their property or other legal rights" as a result of the moratorium. *Stefanoni v. Department of Economic and Community Development*, 142 Conn.App. 300, 306-07 (Conn. App. Ct. 2013).
2. In their Petition, Petitioners have not alleged facts sufficient to establish that the issuance of the moratorium is of specific, personal and legal interest to them, or that the issuance of the moratorium injuriously affected their property or other legal rights.

3. Petitioners are not aggrieved by the issuance of the moratorium. Any pending applications are unaffected by the issuance of the moratorium. As Petitioner Summit Saugatuck recognizes, a “resubmission” of its zoning application that was denied on June 20, 2019 is deemed a continuation of its earlier application and is therefore unaffected by the issuance of the moratorium. Petitioners have not submitted any applications for affordable housing developments in the Town of Westport since the granting of the moratorium.
4. The fact that the Planning and Zoning Commission referenced the moratorium in its denial of Summit Saugatuck’s Text Amendment for a new zoning district does not confer standing. The denial was not made based on the existence of the moratorium, but simply referenced the Certificate of Affordable Housing Completion as evidence of one of its nine reasons for the denial, namely, its conclusion that the Commission had created multiple affordable housing opportunities within existing zoning regulations.
5. If Petitioners’ current applications lead to a revised or alternative site plan, the moratorium would only apply if the revised or alternative plan were considered to be a new application. The possibility that Petitioners may have to reapply or refile if their current applications lead to a revised or alternative site plan that would be considered a new application is too remote and speculative to demonstrate a specific legal interest or injury at stake for Petitioners here.
6. Petitioners are not aggrieved by the fact that they own property that may be developable in the future.
7. The Petition seeks to overturn a decision made by the Commissioner of Housing after extensive consideration of all facts and arguments submitted. The declaratory ruling process is not the appropriate method to seek redress of a DOH determination that was previously made and reexamined pursuant to controlling statutory and regulatory provisions.
8. Petitioners do not seek a ruling on the validity of the Regulations governing CGS § 8-30g, nor do Petitioners seek a ruling on the “applicability” of CGS § 8-30g or the associated Regulations to specified circumstances here. Specifically, the Petition does not question that CGS 8-30g and its associated Regulations are applicable to the circumstances here, but rather challenges only the way in which the statute and regulations were applied.
9. DOH carefully considered all written comments submitted concerning the Application and moratorium, including those submitted by Petitioners pursuant to RCSA § 8-30g-6.
10. DOH has carefully reviewed the Petition in this matter. Petitioners do not have an affected legal interest or injury and are therefore not aggrieved for purposes of standing here. The issues raised in the Petition have already been examined by DOH pursuant to the appropriate statutory and regulatory provisions. The declaratory ruling process cannot be utilized by Petitioners to prompt reconsideration by DOH. Petitioners do not have standing and this is not a proper subject of a petition for declaratory ruling before DOH; therefore, DOH declines to issue a declaratory ruling on this Petition.

Dated this 29th day of July, 2019.


Seila Mosquera-Bruno
Commissioner
Department of Housing

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed by certified mail, postage prepaid, return receipt requested, this 1st day of August, 2019 to the following:

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