

STATE OF CONNECTICUT
DEPARTMENT OF HOUSING

OFFICE OF THE COMMISSIONER

JUNE 4, 2019

PETITION FOR DECLARATORY RULING PURSUANT TO GENERAL
STATUTES § 4-176 REGARDING LEGALITY OF MORATORIUM
FROM GENERAL STATUTES § 8-30g, AS ISSUED TO THE TOWN OF
WESTPORT BY THE CONNECTICUT DEPARTMENT OF HOUSING, MARCH 2019

I. INTRODUCTION.

In Public Acts 00-206 and 02-87, the Connecticut General Assembly amended the subsections of General Statutes § 8-30g, the Affordable Housing Land Use Appeals Act ("Act") (Exh. 1, attached), under which a municipality may apply to the State Department of Housing ("Department") for a "Certificate of Affordable Housing Completion," the issuance of which exempts the municipality from most § 8-30g applications, for a period of four years. *See* generally General Statutes § 8-30g(l), Exh. 1.¹

Petitioners **Summit Saugatuck, LLC** and **Garden Homes Management Corporation** are owners, developers, and/or managers of real property in the town of Westport; each has recently utilized, or is now utilizing, General Statutes § 8-30g to obtain zoning approval for an affordable housing development.

In November-December 2018, Westport applied to the Department for a § 8-30g Certificate of Affordable Housing Completion, asserting that it had granted zoning approval and issued certificates of occupancy since 1990 for a sufficient number of housing units to earn enough points to qualify (207 points needed, 220 points claimed) for a Certificate and a four-year moratorium from § 8-30g zoning applications. The petitioners herein filed written procedural and substantive objections to Westport's application in December 2018 and January 2019; these

¹ Throughout this petition, the primary statutory citation is to § 8-30g(l), meaning subsection "small-ell."

letters challenged the factual, statistical, and legal basis of several of Westport's moratorium point claims. In February 2019, the Department granted Westport's application, effective March 6, 2019; the Department determined that Westport had documented 210.75 points. On March 6, 2019, the Department released to the petitioners a copy of the letter it had sent to the Westport First Selectman dated February 25, 2019, informing the town of the granting of the Certificate and explaining the Department's point total determinations regarding Westport's application. The Department's letter did not, however, respond to any of the objections and challenges stated by the petitioners.

After reviewing the Department's February 25, 2019 letter, the petitioners strongly disagree with several of the Department's factual, procedural, statistical, and legal conclusions, and therefore with its issuance of a Certificate to Westport for a § 8-30g moratorium. In light of the narrow margin by which the Department determined qualification for the Certificate, this petition reviews Westport's application and the Department's Certificate issuance, and requests a declaratory ruling from the Department's Commissioner on several legal issues that challenge the Westport Certificate. The petitioners submit that if any one of the questions posed in this petition is answered in the affirmative, then the Certificate issued on March 6, 2019 to Westport must be revoked, the town should be directed to recalculate its points claims and refile its application, and the Department should re-process the resubmitted application, in light of the answers to the petition questions.

This petition is a matter of statewide importance, because (1) § 8-30g is a remedial statute,² intended to address Connecticut's acute shortage of affordable housing and to provide a remedy to exclusionary zoning practices; (2) the moratorium procedure, which exempts a town for four years from several types of affordable housing development that have been successful in producing lower cost housing, is potentially available to 140 of Connecticut's 169 municipalities (29 towns are currently exempt from § 8-30g); (3) the questions posed in this petition potentially

² See, e.g., *Kaufman v. Zoning Commission*, 232 Conn. 122, 140 (1995).

affect every four-year moratorium application that may be filed in the future with the Department; and (4) the Department did not respond to the critical issues raised in the petitioners' January 2019 letters when it ruled on Westport's application on February 25, 2019.

II. PARTIES.

1. Summit Saugatuck, LLC ("Summit Saugatuck"), whose office is at 55 Station Street, Southport, Connecticut 06890, is a developer, builder, and manager of multi-family residential, mixed use, and commercial property in Connecticut and several other states, and from November 2018 to the date of this petition has had pending before the Westport Planning and Zoning Commission a § 8-30g application for a 187-unit rental development on Hiawatha Lane, in which 30 percent of the units will be set aside for 40 years for low- and moderate-income households. Summit Saugatuck also owns another property in Westport, 60 Charles Street, which is developable in compliance with § 8-30g.

2. Garden Homes Management Corporation ("Garden Homes") is a real estate developer, builder, and manager, with an office in Stamford, Connecticut. Garden Homes' portfolio includes hundreds of units of affordable housing, including units in mobile manufactured home parks in Connecticut, New York, and New Jersey. During 2017 - 2018, Garden Homes pursued a § 8-30g application in Westport, which was denied and is now on appeal in Superior Court.

3. Town of Westport is a Connecticut municipality located in Fairfield County, and bordering Norwalk, Wilton, Weston, and Fairfield.

III. JURISDICTION.

This request is made pursuant to the Uniform Administrative Procedure Act ("UAPA"), General Statutes §§ 4-175 and 4-176. General Statutes § 4-176 provides that any person may petition a state agency for a declaratory ruling as to the validity of any regulation, or the applicability to specified circumstances of a provision of the General Statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency. Subsection (e) further provides that the agency must respond in writing to the request in one of five ways:

(1) Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified circumstances, (2) order the matter set for specified proceedings, (3) agree to issue a declaratory ruling by a specified date, (4) decide not to issue a declaratory ruling and initiate regulation-making proceedings, under section 4-168, on the subject, or (5) decide not to issue a declaratory ruling, stating the reasons for its action.

General Statutes § 4-176(e). If the agency fails to take action as required by §§ 4-176(e)(1), (2), or (3), within 60 days of the filing of this petition, decides not to issue a declaratory ruling under §§ 4-176(e)(4) or (5), or is deemed to have decided not to issue a declaratory ruling under § 4-176(i), the petitioner may seek a declaratory judgment in the Superior Court. General Statutes § 4-175(a). Further, a ruling pursuant to § 4-176(e) is appealable as a final decision, *see* General Statutes § 4-166(3).³

IV. BACKGROUND OF GENERAL STATUTES § 8-30g AND ITS FOUR-YEAR MORATORIUM PROCEDURE.

Section 8-30g was adopted in 1989, effective July 1990, after a Governor's Blue Ribbon Commission, which met during 1988-89, produced a report documenting that: (1) housing prices and rents in Connecticut skyrocketed during the 1980's; (2) municipal land use commissions were most often using their authority to approve single-family homes in subdivisions on large lots, but were denying proposals to develop both governmentally-assisted and privately-financed multi-family development that was affordable to moderate or low income households; (3) under then-existing Connecticut land use law, courts were required to give deference to local decision-making; and (4) as a result, lower cost housing denials, even if based on spurious reasons, were being upheld in court based on judicial deference to local commissions, and little lower cost housing was being built.

³ A declaratory ruling petition regarding a § 8-30g application was filed with the Department of Economic and Community Development (whose housing oversight function has since been transferred to the Department of Housing) in 2011 regarding a housing development in Darien, *see Stefanoni v. Department of Economic and Community Development*, 142 Conn. App. 300 (2013).

The legislature's answer, modeled in large part on a successful Massachusetts law adopted in 1969 (known as "Chapter 40B"), and recommended by a "Blue Ribbon Commission," was § 8-30g. The Act's key provisions were to (1) define "affordable housing" as units built with government financial help, or privately financed proposals in which a minimum percent (originally 20 percent, now 30 percent) of the units would be preserved for the long-term (originally 20 years, now 40 years) for moderate and low income households; and (2) alter the burden of proof when an affordable housing applicant appeals a denial to court, by eliminating judicial deference to local decisions and requiring commissions to prove that the denial was based on a "substantial public interest in health, safety or other matters which the Commission may legally consider," and that such interests "clearly outweigh" the need for lower cost housing. Recognizing that a relatively small number of municipalities are host to a relatively high percentage of lower cost housing units, the legislature, from the adoption of § 8-30g, exempted from the law all municipalities in which 10 percent or more of the existing housing stock is government subsidized, financed by the Connecticut Housing Finance Authority, or "deed restricted" to guarantee long-term affordability. This exemption, now known as the "Ten Percent List," as of 2018 makes § 8-30g inapplicable to 29 of Connecticut's 169 towns. *See* § 8-30g(k), Exh. 1.

Since the 1990's, Connecticut courts have recognized that § 8-30g is a remedial statute, *see* n.2 above, intended to overcome exclusionary zoning practices; *as a result, § 8-30g is to be broadly construed to achieve its remedial purposes, and claims of exemptions from § 8-30g, including moratoria, must be narrowly construed.*

Over time, the General Assembly has increased the percentage of units that must be set aside for low or moderate income households. The current standard is 15 percent of units at 80 percent of the lesser of statewide or area median income, 15 percent at 60 percent of the lesser of area / statewide median income, and restrictions in place for at least 40 years. The Act also exempts land located in industrial zones where the regulations do not permit any residential uses. In 1995, the General Assembly adopted General Statutes § 8-30h, which (effective

January 1, 1996) requires the administrator of each affordable housing development containing rental units to file annually with the town's zoning commission a certification of compliance with the Act's affordability (maximum household income and maximum monthly rent) requirements.⁴

In 2000, on the recommendation of a second Blue Ribbon Commission, the legislature adopted a package of procedural changes intended to require § 8-30g applicants to provide more detailed information and to give municipal land use commissions more control over the processing of applications. The 2000 amendments established the current system by which municipalities, after issuing certificates of occupancy to affordable units, could obtain from the Department of Housing a three-year moratorium from § 8-30g applications and the Act's burden-shifting standard of review.⁵ The 2000 amendments also required applicants to make binding commitments in their applications to administration of affordability rules, such as identifying an administrator to ensure on-going compliance, and interspersing affordable units among market-rate units instead of segregating them in one location. In 2002, in Public Act 02-87, the moratorium was lengthened to four years.

The moratorium system, as adopted in 2000, grants a town "housing unit equivalent" ("HUE") 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 units will be preserved for 40 years or more for low and moderate income households.

The Act's moratorium system includes these requirements for a Certificate application:

- a complete application, allowing the Department and the public to understand and verify all point total claims;

⁴ Section 8-30h exempts tenants' household income information from Freedom of Information Act disclosure.

⁵ The moratorium does not apply to an application for state-subsidized housing in which at least 95 percent of the proposed units will be preserved for households earning 60 percent or less of median income; government-subsidized developments of 40 or fewer units; and § 8-30g applications filed with the host municipality prior to the effective date of the moratorium. *See* § 8-30g(1)(2), Exh. 1.

- evidence of compliance with notice requirements;
- public disclosure by the Department of all parts of the town's application, to allow for public comment;
- evidence not only of § 8-30g intended compliance at the time the development was granted zoning approval or issued certificates of occupancy, but evidence of on-going compliance, continuing to the time of the Certificate application to the Department; and
- proper documentation of point deductions for the demolition of affordable housing units.

It is important to understand that the moratorium system, unlike the Ten Percent List, is not simply an inventory of units subject to affordability restrictions. To earn moratorium points, units must be restricted for a minimum affordability period and to a maximum household income that matches the Act's requirements. Thus, the points are prescriptive, reflecting incentives adopted by the second Blue Ribbon Commission (which met in 1999) to encourage the particular types of housing that zoning commissions are least likely to approve. For example, age-restricted (*i.e.*, elderly) units, which sometimes displace needed units for families, receive only 0.5 points, as opposed to 1.0 to 2.5 points granted for "family" (non-age-restricted) units. For family housing with affordability restrictions, the basic point allocation starts with 1.0 point per restricted unit, which is the point award for each ownership unit (*e.g.*, a condominium unit). An extra half point is added if the housing is rental, with more points if the unit is restricted to households below 60 percent or 40 percent of median income. Market-rate units in a set aside development receive one-quarter point. "Median income" is the lesser of the area median household income in the region where the town is located or the statewide median, as published by the federal government. (In general, the statewide median is much less than the median in Fairfield County, but the two are relatively close elsewhere in the state.)

Points are only awarded for units that were newly built or newly deed-restricted after July 1, 1990, the effective date of § 8-30g. State regulations spelling out administrative procedures and details, including for the preparation, filing, and processing of moratorium

applications, were adopted in 2002. The moratorium regulation is Regs. Conn. State Agencies § 8-30g-6, Exh. 2.

To date, Trumbull, Darien (twice), Berlin (twice), Wilton, New Canaan, Farmington, Brookfield, and Ridgefield have achieved moratoria, and at the date of this petition, Milford has a pending application.

As to procedures, when a town is ready to file a moratorium application with the Department, it must first publish a notice in a local newspaper, stating the town's intent to apply, where the application materials are available, and the rights of persons to submit comments. The regulations also give residents the right to petition for and obtain a hearing before the town's legislative body or planning and zoning commission to review the proposed Certificate application. *See* § 8-30g-6(j)(1) of the Regulations, Exh. 2. After the local review period, the town may file its application with the Department, which publishes a notice in the *Connecticut Law Journal* and identifies the dates of a 30 day public comment period. *See* §§ 8-30g(1)(4)(A) and (B), Exh. 1. Thereafter, the Department may deny the application, ask for additional information, or approve, within 60 days. If approved, the Department publishes a notice as to the effective date of the moratorium. *Id.*

V. AFFORDABLE HOUSING NEED.

On the Department of Housing's Ten Percent List, as of 2018, Westport stands at 3.57 percent, ranking it 96th among Connecticut's 169 towns. However, the median home price in Westport in 2018 was more than \$1,000,000, and the average rent was \$1,870. The Westport Housing Authority currently has a wait list (now closed) of more than 1,000 households seeking occupancy in the affordable units it manages.

VI. WESTPORT'S DECEMBER 2018 MORATORIUM APPLICATION.

As shown in Exh. 4, Westport's Certificate application was based on 10 developments. The town initially claimed 220 points against a statutory qualifying standard of 207.

In November 2018, Westport published a local newspaper notice of its intent to apply to the Department for a Certificate. Regs. Conn. State. Agencies § 8-30g-6(j)(1) requires local

notice and spells out the rights of municipal residents and the public prior to the commencement of a moratorium application (emphasis added):

A municipality intending to submit to the department an application for a state certificate of affordable housing completion shall publish in the Connecticut Law Journal and in a newspaper of general circulation in the municipality a notice of its intent to apply and the availability of its proposed application for public inspection and comment. Such notice shall state the location where the proposed application, including all supporting documentation, shall be available for inspection and comment, and to whom written comments may be submitted. Such application and documentation shall be made available in the office of the municipal clerk for no less than twenty (20) calendar days after publication of notice. *If within the comment period, a petition signed by at least twenty-five (25) residents of the municipality is filed with the municipal clerk requesting a public hearing with respect to the proposed application, either the municipality's legislative body or its zoning or planning commission shall hold such a hearing.* A copy of all written comments received, responses by the municipality to comments received, and a description of any modifications made or not made to the application or supporting documentation as a result of such comments, shall be attached to the application when submitted to the commissioner.

However, the November 2018 notice that Westport stated in its entirety:

Notice is hereby given that the Town of Westport, Connecticut intends to file an Application for Certificate of Affordable Housing Completion (moratorium on the applicability of Section 8-30g) with the Department of Housing of the State of Connecticut, pursuant to Section 8-30g(1)(4)(B) of the Connecticut General Statutes.

The proposed application, including all supporting documentation, is available for public inspection and comment in the Office of the Town Clerk, Town Hall, 110 Myrtle Avenue, Room 105, Westport, Connecticut, from 8:30 a.m. to 4:30 p.m. weekdays. Written comments may be submitted to Mary Young, Planning and Zoning Director, at the Planning and Zoning Office in Town Hall, 110 Myrtle Avenue, Room 203, within 20 days of the publication of this notice in the Westport News and the Connecticut Law Journal. A copy of all written comments received and responses prepared by the municipality will be included as part of the application to the Department of Housing.

See Exh. 5. Thus, Westport's notice failed to apprise citizens of the opportunity to petition for a hearing.

Westport then proceeded with filing its application for a Certificate with the Department, on December 5, 2018. Among other defects, the application only provided partial evidence of restrictions on household incomes, monthly rents, or sale / resale prices as of the date of zoning approval, and no evidence for any points claimed of on-going compliance with affordability restrictions from the year of occupancy to the date of the Certificate application. The Department published notice on December 25, 2018 of its receipt of Westport's application, thus beginning the opportunity for interested parties to submit comments on or before January 24, 2019. The Department thereafter made available publicly a link to Westport's filed application.⁶

Upon review of the local notice, Attorney Anika Singh Lemar of Yale Law School wrote to Westport First Selectman Marpe on January 2, 2019, Exh. 6, pointing out that the published notice was defective because it did not apprise anyone of the opportunity to petition the Westport Representative Town Meeting or Planning and Zoning Commission for a hearing on Westport's application, prior to filing with the Department of Housing. In addition, an attorney representing Morningside Homes, LLC, and Greens Farms Developers, LLC (developers who, at that time, had a pending § 8-30g application), filed a comment / objection letter on January 18, 2019, Exh. 8. In that letter, Attorney David Hoopes pointed out a substantial (7.0 points) math error in the town's application, and explained why the town's points claims for the Sasco Creek and Hales Court developments improperly claimed 58 points. On January 22, 2019, Summit Saugatuck (which had filed its § 8-30g application in November 2018) filed its own comment letter, Exh. 9. Yale Law School, on behalf of the Open Communities Alliance, filed a letter with objections and comments on January 23, 2019, Exh. 7. Both of these letters discussed the defective local notice, the lack of evidence of on-going compliance, and various math errors and discrepancies.

⁶ Westport's December 2018 application consists of several hundred pages. Since the Department and all interested parties have in hand a hard copy, and an electronic copy can be made available to others, the complete application has not been included in the Exhibits.

On January 24, 2019, Westport filed with the Department two letters, one from Town Attorneys Ira Bloom and Nicholas Bamonte (Exh. 10), and one from Redniss & Mead (Exh. 11), a land planning / consulting / engineering firm located in Stamford. That firm had prepared the zoning application for several of the developments that Westport claimed to provide moratorium points. These two letters responded to Attorney Hoopes' January 18, 2019 letter. In these responses, Westport corrected and reduced its claimed points from 220.25 to 216.25, and defended its claims for Sasco Creek (24.25 points) and Hales Court (83 points), while conceding that some of its claims might not strictly adhere to statutes and regulations, but should be accepted as to satisfying the policy goal of encouraging affordable housing.⁷ *The Department, in either January or February 2019, did not publicly disclose the submission, existence, or content of these two late-filed letters or make them available for public comment.*

In a February 14, 2019 letter to Attorney Lemar of Yale Law School, Exh. 12, responding to her January 2, 2019 letter, the Department took the position that a statement of the right of residents to petition for a hearing at the local level did not need to be part of a town's published notice of intent to file for a Certificate, because the right to petition is contained in a separate sentence from the words, "Such notice shall state. . . ."

The Department then issued its letter granting the Certificate on February 25, 2019, Exh. 13, and published notice of the grant of the Certificate in the Connecticut Law Journal on March 6, 2019, thus commencing the four-year moratorium on that date. Also on March 6, the Department, for the first time, provided the petitioners with a copy of the town's January 24, 2019 letters. *See* Exh. 14. The Department's February 25, 2019 letter contains the Department's point calculations, but contains no responses to the comments and objections stated in the January 2019 letters from Yale Law School / OCA, Summit Saugatuck, Garden Homes, or Morningside / Greens Farms. In several instances, the Department recalculated the town's point

⁷ *"Although these units do not qualify as 'restricted' for purposes of point calculation, in reality, these units are limited to those families with income at or below 60% AMI" (emphasis added). The town claimed the points nonetheless.*

claims, most notably for the Hidden Brook development, for which the town claimed 6.0 points, but the Department, based on unidentified and undisclosed "records of the Department," granted 30 points, without which the application would have been denied.

VII. DECLARATORY RULING PETITION QUESTIONS.

Against the background of the facts and legal requirements stated above, this petition poses for declaratory ruling by the Commission the following issues regarding the Department's 2018-2019 processing of Westport's application. We believe the application is defective on both procedural and substantive grounds.

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 residents?

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?

VIII. WESTPORT'S CERTIFICATE SHOULD BE REVOKED DUE TO VIOLATIONS OF GENERAL STATUTES § 8-30g(l) AND STATE REGULATIONS § 8-30g-6 IN THE DEPARTMENT OF HOUSING'S PROCESSING OF AND DECISION ON WESTPORT'S APPLICATION.⁸

1. Issue #1: The Department Improperly Approved Westport's Application, Because The Town Did Not Publish A Notice To Its Residents Required By The Act.

To properly provide Westport residents and others an opportunity to be heard, the locally-published notices of Westport's intent to apply should have included a description of the right of 25 residents, by signing and filing a petition, to obtain a public hearing on Westport's Certificate application at the Westport Representative Town Meeting or Planning and Zoning Commission. Compliance with all applicable regulatory requirements is a precondition to the filing of a moratorium application. In all land use matters, it is axiomatic that notice must "fairly and sufficiently apprise those who may be affected of the nature and character of the action

⁸ Section 8-30g was amended in 2017 by Public Act 17-170. None of those amendments impacts the issues raised in this petition.

proposed." See R. Fuller, *Connecticut Land Use Law and Practice*, § 46-3 (4th ed. 2018) and cases cited therein. A failure to give any notice about the opportunity for a hearing is plainly a notice defect and a violation of procedural due process. *Id.* In other contexts, the courts have held that a requirement for notice of a right implicitly requires that the notice disclose how that right can be exercised. See e.g., *Nathan Hale Apartments v. Mortenson*, 1996 WL 727330 at *2 (Conn. Super. Ct. 1996) (holding that pre-termination notices must contain a statement of the statutory right to cure, even though the statutory language about the content of the notice did not include the right cure, because "the right to remedy problems would be meaningless without notice of the right") (and appellate and trial court decisions cited therein). By omitting any reference to the petition / hearing procedure, Westport failed to provide its residents with adequate notice of how they could be heard.

It is unlikely that Westport residents, without specific knowledge of how to research state regulations about the specific § 8-30g moratorium process, would ever discover the petition procedure on their own. Indeed, the language of Westport's moratorium notice would lead any interested resident to believe that the only means of participating in Westport's moratorium application would be to submit written comments to the Director of Planning and Zoning within 20 days of the published notice. In other words, the town's November 2018 moratorium notices were both incomplete *and* misleading. Moreover, there is no reference in the application package prepared by the town and filed with the Town Clerk to the § 8-30g-6(j)(1) public hearing petition procedure, so the omission would not be discovered by an inquiry at that office.

While it is unknown (and irrelevant) whether 25 residents would have filed a petition seeking a hearing, it is well-known in Westport that the Westport Housing Authority has a closed wait list for affordable housing containing more than 1,000 households. Adequate notice is a pre-condition for filing a moratorium application, and the failure to meet a pre-condition invalidates the application's approval.

2. Issue #2: The Department Improperly Approved Westport's Application By Failing To Publicly Disclose Two Late-Filed Letters Containing Changes To The Town's Points Claims.

Regs. Conn. State Agencies § 8-30g-6(j)(4) could not be clearer: "Such application [when received and deemed complete by the Department], including all supporting documentation, shall be made available to the public." In two letters filed with the Department on January 24, 2019, the last day of the public comment period (which had commenced Christmas Day, 2018), Westport both amended its points claim and conceded that portions of its points claims (almost 100 of its 210-220 points) might not meet the requirements of the Act and applicable regulations, but should be approved as a matter of policy. *At that point, the Department should have sent the application back to Westport, asked it to revise its application and resubmit to the Department, and started a new round of notice and public comment.* At the very least, the Department should have made the new submissions public and extended the comment period. To the contrary, the Department processed the application without making the January 24 letters public, and did not even reveal the timing of their submission in the Department's February 25, 2019 letter granting the moratorium. The Department's processing and decision in this regard constituted a substantial violation of the Act and its regulations.

3. Issue #3: The Department Improperly Approved Westport's Application, Which Failed To Provide Evidence Of On-Going Compliance With § 8-30g.

Westport's application did not include for its points claims evidence of on-going compliance with statutory and regulatory affordability requirements from the date of initial residential occupancy or newly-imposed affordability restriction, to the date that Westport filed its Certificate application with the Department.⁹

Multiple provisions of the Act and Regulations require evidence of ongoing compliance. First, the very nature of the moratorium application is a town's documentation that it has approved and is overseeing residential units with affordability restrictions; it would be contrary

⁹ It should be noted that the "Ten Percent List" of towns exempt from § 8-30g that the Department compiles and publishes pursuant to General Statutes § 8-30g (k) is based on annual compliance reporting by all 169 towns to the Department.

to the purpose of the moratorium system to grant a Certificate based on approval action many years prior but without evidence of oversight and enforcement. Second, the Act and the regulations require proof of adoption or imposition of binding, enforceable affordability restrictions, and certificates of occupancy issued for units subject to these restrictions but the Act and regulations then go on to require documentation of an enforceable affordability obligation "at the time of application"; thus, necessarily, evidence of what has occurred during the intervening time period is needed. In addition, § 8-30g-6(c)(2) of the Regulations requires a letter from the town attorney opining that the application complies with state law "as in effect on the day the application is submitted," and § 8-30g-6(c)(6) of the Regulations requires certification that certificates of occupancy for claimed units are "currently in effect." Section 8-30g-6(f)(3) of the Regulations requires, as one way to provide evidence of currently enforceable affordability obligations, a § 8-30h compliance report "if less than one year old." It would be antithetical to the purposes of the Act to grant moratorium points to a town that grants zoning approval and issues certificates of occupancy, but does not collect information about compliance or take enforcement action if a development fails to submit compliance reports.

Westport's application contained none of this critical documentation of ongoing compliance. Some of the developments claimed for points were issued certificates of occupancy more than ten years ago,¹⁰ yet the 2018 application contains nothing on what has happened since. In several cases, the town failed to submit a deed restriction or other binding covenant, thus

¹⁰ For example, in the past two years, the Department became aware of a town that asserted that it was entitled to a Ten-Percent List exemption from § 8-30g, when in fact a federally-subsidized mortgage for a large (200+ unit) development had expired several years earlier, which had not been reported to Department. In Westport, the certificates of occupancy for the developments for which points are claimed were issued as far back as 1999 (Hidden Brook); 2013 (Cross Street); 2009 (Rotary House, Bradley Common); 2010 (Hales Court); 2011 (Saugatuck Center); and 2015 (Sasco Creek). By not proving evidence of on-going compliance since certificates of occupancy were issued, the town is essentially asserting that moratorium points should be awarded based on initial compliance, without regard to whether the developer, and the town in its oversight capacity, have enforced the rules and restrictions in the following years.

failing to establish that the units are, in fact, restricted as required by § 8-30g(6). The submitted Affordability Plans provided for Bradley Commons and Bedford Square were only excerpts. None of the annual reports required by § 8-30g were included for any development. In connection with the two home ownership development (Cross Street and Bradley Commons) for which points are claimed, the town's application did not disclose what the sales prices have been. Since the General Assembly adopted § 8-30h to ensure annual compliance reporting,¹¹ it would be strange if these reports could be omitted from a moratorium application intended to determine unit eligibility under the Act.¹²

Requiring submission of this documentation should be easy, because all of these documents should be on file with the town. Thus, the Department should have requested and received them before processing the application.

4. Issue #4: The Department Improperly Granted 9.0 Points For Rotary Centennial House Without Having Evidence Of Compliance With the Minimum The Affordability Period.

The town did not establish the duration of the deed restriction as required by § 8-30g(a)(6) for Rotary Centennial House. Section 8-30g(a)(6) of the General Statutes requires set aside units to be deed-restricted for a period of no less than 40 years. In the case of Rotary Centennial House, as set forth at Volume 2923, Page 343 of the Land Records, the Declaration and Agreement of Restrictive Covenants may expire when "the Mortgage Loan is fully paid." The town's application did not include any mortgage documentation, which would have specified whether the term of the mortgage met the Act's required duration for affordability, and whether the mortgage could be prepaid, which would terminate the deed restriction. The documents submitted did not justify the points claimed. The Department improperly awarded 9.0 points.

¹¹ As noted earlier, § 8-30h provides that identification of the annual household income information of tenants in restricted units is not subject to FOIA disclosure, and thus such information would need to be redacted.

¹² Federal affordable housing programs have similar compliance reporting obligations, as Westport's own application documentation shows for Hidden Brook, for example.

5. Issue #5: The Department Improperly Increased The Town's Points Claim For Hidden Brook Based On Unidentified And Undisclosed "Records Of The Department."

Hidden Brook was, before 1999, a mobile home park with 35 units. In the early 2000's, the town approved 39 townhomes, only four of which were restricted to maximum incomes compliant with § 8-30g. The town claimed 6.0 points (for the four units), with no points for the other 35 units because they were built as "replacements" for the 35 demolished units (with the construction and demolition points offsetting). The Department, however, in its February 2019 letter, stated that only 19 units were demolished, "according to records of the Department" As a result, the Department only deducted points for the demolition of 19 units, not 35, thereby granting 30 points where the town only claimed 6.0. But the Department has never identified or publicly disclosed the Department "records" or made available for public review their critical details – ownership of the land vs. units, financing and deed restrictions, maximum household income limits, monthly rent restrictions, elderly vs. family, affordability period, etc., all of which characteristics are essential to determining correctly how many points should be deducted from the points claimed for the Hidden Brook redevelopment. Indeed, Westport's application raises unusual point-counting issues because of the nature of Hidden Brook as a mobile home park, and apparent conflicts between financing restrictions and deed restrictions. The public has not had an opportunity to comment on the accuracy of the Hidden Brook calculation, which contradicts Westport's own representations. A substantial calculation error may have occurred; neither the petitioners nor the public knows for sure. Given that the Department granted the Certificate by only a three-point margin, this significant violation of the statutory requirement for public disclosure of all application information requires correction.

IX. REQUEST FOR RELIEF AND HEARING.

A. Relief.

The petitioners request that the Commission hold a hearing on this petition. The documents that form the basis of this petition can be stipulated, provided that all documents

relevant to and relied upon by the Department, especially for Hidden Brook, should be disclosed and made available for review; such a stipulation may narrow the need for fact-finding.

As relief, the petitioners ask that due to the Certificate having been issued based on a margin of only three points, if any one of the issues posed in this petition is answered in the affirmative, the Department of Housing should (1) revoke the Certificate issued on March 6, 2019 to the town of Westport; (2) direct the town to recalculate, justify, and refile its application in light of the issues raised and answers issued as a result of this petition; and (3) re-process Westport's application in light of this petition, with a new public comment period.

Summit Saugatuck, LLC and Garden Homes Management Corporation have standing to bring this petition because each is an owner of real property that is, as of the date of this petition, utilizing, or eligible to use, § 8-30g to pursue an affordable housing development in Westport. Although zoning applications filed prior to March 6, 2019 are grandfathered from the moratorium, each petitioner faces the possibility of having to reapply or refile if, for some reason, its current application leads to an alternative or substantially revised site plan. Summit Saugatuck also owns other land in Westport that could be developed under § 8-30g.

B. Addresses Of Petitioners.

1. Summit Saugatuck, LLC, 55 Station Street, Southport, Connecticut 06890.
2. Garden Homes Management Corporation, 29 Knapp Street,

P.O. Box 4401, Stamford, Connecticut 06907.

C. Notice.

General Statutes § 4-176 requires the Department to give appropriate notice of this petition to potentially interested parties. Because the statutory procedure for announcing receipt and determination of a moratorium application is publication in the Connecticut Law Journal, the petitioners suggest that the Department use that publication to provide notice.

With the filing of this petition with the Commissioner of the Department of Housing, a courtesy copy has been emailed to Ira Bloom, Esq., the Town Attorney of Westport.

X. CONCLUSION.

For these reasons, the petitioners Summit Saugatuck, LLC and Garden Homes Management Corporation submit this declaratory ruling petition.

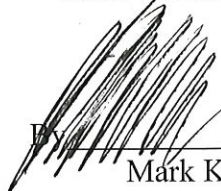
Dated: Hartford, Connecticut
June 11, 2019

RESPECTFULLY SUBMITTED,
SUMMIT SAUGATUCK, LLC

By 

Timothy S. Hollister, Esq.
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Its Attorney

RESPECTFULLY SUBMITTED,
GARDEN HOMES MANAGEMENT
CORPORATION

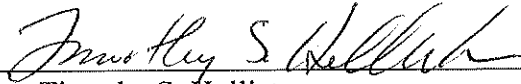


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Tel.: (860) 241-4008
Fax: (860) 548-0006
Its Attorney

CERTIFICATION

I certify that a copy of the foregoing Petition for Declaratory Ruling was mailed, postage prepaid, this 11th day of June, 2019, to:

The Hon. Seila Mosquera-Bruno
Commissioner
Department of Housing
505 Hudson Street
Hartford, CT 06106-7106



Timothy S. Hollister
Commissioner of the Superior Court

STATE OF CONNECTICUT
DEPARTMENT OF HOUSING

OFFICE OF THE COMMISSIONER

JUNE 4, 2019

EXHIBITS IN SUPPORT OF PETITION FOR DECLARATORY RULING PURSUANT TO
GENERAL STATUTES § 4-176 REGARDING LEGALITY OF MORATORIUM
FROM GENERAL STATUTES § 8-30g, AS ISSUED TO THE TOWN OF
WESTPORT BY THE CONNECTICUT DEPARTMENT OF HOUSING, MARCH 6, 2019

1. General Statutes §§ 8-30g and 8-30h
2. Regs. Conn. State Agencies § 8-30g-6
3. General Statutes § 4-176
4. Excerpt, Town of Westport Application for Certificate of Affordable Housing Completion, December 2018
5. Notice of Intent to Apply for a State Certificate published by Town of Westport, November 2018
6. Letter, Yale Law School to Department of Housing, January 2, 2019
7. Letter to Department of Housing from Anika Singh Lemar of Yale Law School, January 23, 2019
8. Letter to Department of Housing Commissioner Klein from David S. Hoopes, Esq., January 18, 2019
9. Letter to Department of Housing Acting Commissioner Santoro from Timothy S. Hollister, January 22, 2019
10. Letter to Department of Housing Acting Commissioner Santoro from Ira W. Bloom, Esq. and Nicholas R. Bamonte, Esq., January 24, 2019
12. Letter to Nicholas R. Bamonte, Esq. from Richard W. Redniss, January 24, 2019
12. Letter to Anika Singh Lemar from Department of Housing Acting Commissioner Michael Santoro, February 14, 2019

13. Letter to First Selectman James Marpe from Department of Housing Acting Commissioner Michael Santoro, February 25, 2019
14. E-mails from Laura Watson of Department of Housing, March 6, 2019

Connecticut General Statutes Annotated

Title 8. Zoning, Planning, Housing and Economic and Community Development (Refs & Annos)

Chapter 126A. Affordable Housing Land Use Appeals (Refs & Annos)

C.G.S.A. § 8-30g

§ 8-30g. Affordable housing land use appeals procedure. Definitions. Affordability plan; regulations. Conceptual site plan. Maximum monthly housing cost. Percentage-of-income requirement. Appeals. Modification of application. Commission powers and remedies. Exempt municipalities. Moratorium. Model deed restrictions

Effective: July 24, 2017 to September 30, 2022

Currentness

<Section effective until Oct. 1, 2022. See, also, section 8-30g effective Oct. 1, 2022.>

(a) As used in this section and section 8-30j:

(1) "Affordable housing development" means a proposed housing development which is (A) assisted housing, or (B) a set-aside development;

(2) "Affordable housing application" means any application made to a commission in connection with an affordable housing development by a person who proposes to develop such affordable housing;

(3) "Assisted housing" means housing which is receiving, or will receive, financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing, and any housing occupied by persons receiving rental assistance under chapter 319uu¹ or Section 1437f of Title 42 of the United States Code;

(4) "Commission" means a zoning commission, planning commission, planning and zoning commission, zoning board of appeals or municipal agency exercising zoning or planning authority;

(5) "Municipality" means any town, city or borough, whether consolidated or unconsolidated;

(6) "Set-aside development" means a development in which not less than thirty per cent 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 per cent or less of their annual income, where such income is less than or equal to eighty per cent 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 fifteen per cent 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 per cent 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 and families whose income is less than or equal to eighty per cent of the median income;

(7) "Median income" means, after adjustments for family size, 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, as determined by the United States Department of Housing and Urban Development; and

(8) "Commissioner" means the Commissioner of Housing.

(b) (1) Any person filing an affordable housing application with a commission shall submit, as part of the application, an affordability plan which shall include at least the following: (A) Designation of the person, entity or agency that will be responsible for the duration of any affordability restrictions, for the administration of the affordability plan and its compliance with the income limits and sale price or rental restrictions of this chapter; (B) an affirmative fair housing marketing plan governing the sale or rental of all dwelling units; (C) a sample calculation of the maximum sales prices or rents of the intended affordable dwelling units; (D) a description of the projected sequence in which, within a set-aside development, the affordable dwelling units will be built and offered for occupancy and the general location of such units within the proposed development; and (E) draft zoning regulations, conditions of approvals, deeds, restrictive covenants or lease provisions that will govern the affordable dwelling units.

(2) The commissioner shall, within available appropriations, adopt regulations pursuant to chapter 54² regarding the affordability plan. Such regulations may include additional criteria for preparing an affordability plan and shall include: (A) A formula for determining rent levels and sale prices, including establishing maximum allowable down payments to be used in the calculation of maximum allowable sales prices; (B) a clarification of the costs that are to be included when calculating maximum allowed rents and sale prices; (C) a clarification as to how family size and bedroom counts are to be equated in establishing maximum rental and sale prices for the affordable units; and (D) a listing of the considerations to be included in the computation of income under this section.

(c) Any commission, by regulation, may require that an affordable housing application seeking a change of zone include the submission of a conceptual site plan describing the proposed development's total number of residential units and their arrangement on the property and the proposed development's roads and traffic circulation, sewage disposal and water supply.

(d) For any affordable dwelling unit that is rented as part of a set-aside development, if the maximum monthly housing cost, as calculated in accordance with subdivision (6) of subsection (a) of this section, would exceed one hundred per cent of the Section 8 fair market rent as determined by the United States Department of Housing and Urban Development, in the case of units set aside for persons and families whose income is less than or equal to sixty per cent of the median income, then such maximum monthly housing cost shall not exceed one hundred per cent of said Section 8 fair market rent. If the maximum monthly housing cost, as calculated in accordance with subdivision (6) of subsection (a) of this section, would exceed one hundred twenty per cent of the Section 8 fair market rent, as determined by the United States Department of Housing and Urban Development, in the case of units set aside for persons and families whose income is less than or equal to eighty per cent of the median income, then such maximum monthly housing cost shall not exceed one hundred twenty per cent of such Section 8 fair market rent.

(e) For any affordable dwelling unit that is rented in order to comply with the requirements of a set-aside development, no person shall impose on a prospective tenant who is receiving governmental rental assistance a maximum percentage-of-income-for-housing requirement that is more restrictive than the requirement, if any, imposed by such governmental assistance program.

(f) Except as provided in subsections (k) and (l) of this section, any person whose affordable housing application is denied, or is approved with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units in a set-aside development, may appeal such decision pursuant to the procedures of this section. Such appeal shall be filed within the time period for filing appeals as set forth in section 8-8, 8-9, 8-28 or 8-30a, as applicable, and shall be made returnable to the superior court for the judicial district where the real property which is the subject of the application is located. Affordable housing appeals, including pretrial motions, shall be heard by a judge assigned by the Chief Court Administrator to hear such appeals. To the extent practicable, efforts shall be made to assign such cases to a small number of judges, sitting in geographically diverse parts of the state, so that a consistent body of expertise can be developed. Unless otherwise ordered by the Chief Court Administrator, such appeals, including pretrial motions, shall be heard by such assigned judges in the judicial district in which such judge is sitting. Appeals taken pursuant to this subsection shall be privileged cases to be heard by the court as soon after the return day as is practicable. Except as otherwise provided in this section, appeals involving an affordable housing application shall proceed in conformance with the provisions of section 8-8, 8-9, 8-28 or 8-30a, as applicable.

(g) Upon an appeal taken under subsection (f) of this section, the burden shall be on the commission to prove, based upon the evidence in the record compiled before such commission, that the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record. The commission shall also have the burden to prove, based upon the evidence in the record compiled before such commission, that (1) (A) the decision is necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider; (B) such public interests clearly outweigh the need for affordable housing; and (C) such public interests cannot be protected by reasonable changes to the affordable housing development, or (2) (A) the application which was the subject of the decision from which such appeal was taken would locate affordable housing in an area which is zoned for industrial use and which does not permit residential uses; and (B) the development is not assisted housing. If the commission does not satisfy its burden of proof under this subsection, the court shall wholly or partly revise, modify, remand or reverse the decision from which the appeal was taken in a manner consistent with the evidence in the record before it.

(h) Following a decision by a commission to reject an affordable housing application or to approve an application with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units, the applicant may, within the period for filing an appeal of such decision, submit to the commission a proposed modification of its proposal responding to some or all of the objections or restrictions articulated by the commission, which shall be treated as an amendment to the original proposal. The day of receipt of such a modification shall be determined in the same manner as the day of receipt is determined for an original application. The filing of such a proposed modification shall stay the period for filing an appeal from the decision of the commission on the original application. The commission shall hold a public hearing on the proposed modification if it held a public hearing on the original application and may hold a public hearing on the proposed modification if it did not hold a public hearing on the original application. The commission shall render a decision on the proposed modification not later than sixty-five days after the receipt of such proposed modification, provided, if, in connection with a modification submitted under this subsection, the applicant applies for a permit for an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, and the time for a decision by the commission on such modification under this subsection would lapse prior to the thirty-fifth day after a decision by an inland wetlands and watercourses agency, the

time period for decision by the commission on the modification under this subsection shall be extended to thirty-five days after the decision of such agency. The commission shall issue notice of its decision as provided by law. Failure of the commission to render a decision within said sixty-five days or subsequent extension period permitted by this subsection shall constitute a rejection of the proposed modification. Within the time period for filing an appeal on the proposed modification as set forth in section 8-8, 8-9, 8-28 or 8-30a, as applicable, the applicant may appeal the commission's decision on the original application and the proposed modification in the manner set forth in this section. Nothing in this subsection shall be construed to limit the right of an applicant to appeal the original decision of the commission in the manner set forth in this section without submitting a proposed modification or to limit the issues which may be raised in any appeal under this section.

(i) Nothing in this section shall be deemed to preclude any right of appeal under the provisions of section 8-8, 8-9, 8-28 or 8-30a.

(j) A commission or its designated authority shall have, with respect to compliance of an affordable housing development with the provisions of this chapter, the same powers and remedies provided to commissions by section 8-12.

(k) The affordable housing appeals procedure established under this section shall not be available if the real property which is the subject of the application is located in a municipality in which at least ten per cent of all dwelling units in the municipality are (1) assisted housing, (2) currently financed by Connecticut Housing Finance Authority mortgages, (3) subject to binding recorded deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty per cent or less of income, where such income is less than or equal to eighty per cent of the median income, (4) mobile manufactured homes located in mobile manufactured home parks or legally approved accessory apartments, which homes or apartments are subject to binding recorded deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as housing for which, for a period of not less than ten years, persons and families pay thirty per cent or less of income, where such income is less than or equal to eighty per cent of the median income, or (5) mobile manufactured homes located in resident-owned mobile manufactured home parks. The municipalities meeting the criteria set forth in this subsection shall be listed in the report submitted under section 8-37qqq. As used in this subsection, "accessory apartment" means a separate living unit that (A) is attached to the main living unit of a house, which house has the external appearance of a single-family residence, (B) has a full kitchen, (C) has a square footage that is not more than thirty per cent of the total square footage of the house, (D) has an internal doorway connecting to the main living unit of the house, (E) is not billed separately from such main living unit for utilities, and (F) complies with the building code and health and safety regulations, and "resident-owned mobile manufactured home park" means a mobile manufactured home park consisting of mobile manufactured homes located on land that is deed restricted, and, at the time of issuance of a loan for the purchase of such land, such loan required seventy-five per cent of the units to be leased to persons with incomes equal to or less than eighty per cent of the median income, and either (i) forty per cent of said seventy-five per cent to be leased to persons with incomes equal to or less than sixty per cent of the median income, or (ii) twenty per cent of said seventy-five per cent to be leased to persons with incomes equal to or less than fifty per cent of the median income.

(l) (1) Except as provided in subdivision (2) of this subsection, the affordable housing appeals procedure established under this section shall not be applicable to an affordable housing application filed with a commission during a moratorium, which shall commence after (A) a certification of affordable housing project completion issued by the commissioner is published in the Connecticut Law Journal, or (B) notice of a provisional approval is published pursuant to subdivision (4) of this subsection. Any such moratorium shall be for a period of four years, except that for any municipality that has (i) twenty thousand or more dwelling units, as reported in the most recent United States decennial census, and (ii)

previously qualified for a moratorium in accordance with this section, any subsequent moratorium shall be for a period of five years. Any moratorium that is in effect on October 1, 2002, is extended by one year.

(2) Such moratorium shall not apply to (A) affordable housing applications for assisted housing in which ninety-five per cent of the dwelling units are restricted to persons and families whose income is less than or equal to sixty per cent of the median income, (B) other affordable housing applications for assisted housing containing forty or fewer dwelling units, or (C) affordable housing applications which were filed with a commission pursuant to this section prior to the date upon which the moratorium takes effect.

(3) Eligible units completed after a moratorium has begun may be counted toward establishing eligibility for a subsequent moratorium.

(4) (A) The commissioner shall issue a certificate of affordable housing project completion for the purposes of this subsection upon finding that there has been completed within the municipality one or more affordable housing developments which create housing unit-equivalent points equal to (i) the greater of two per cent of all dwelling units in the municipality, as reported in the most recent United States decennial census, or fifty housing unit-equivalent points, or (ii) for any municipality that has (I) adopted an affordable housing plan in accordance with section 8-30j, (II) twenty thousand or more dwelling units, as reported in the most recent United States decennial census, and (III) previously qualified for a moratorium in accordance with this section, one and one-half per cent of all dwelling units in the municipality, as reported in the most recent United States decennial census.

(B) A municipality may apply for a certificate of affordable housing project completion pursuant to this subsection by applying in writing to the commissioner, and including documentation showing that the municipality has accumulated the required number of points within the applicable time period. Such documentation shall include the location of each dwelling unit being counted, the number of points each dwelling unit has been assigned, and the reason, pursuant to this subsection, for assigning such points to such dwelling unit. Upon receipt of such application, the commissioner shall promptly cause a notice of the filing of the application to be published in the Connecticut Law Journal, stating that public comment on such application shall be accepted by the commissioner for a period of thirty days after the publication of such notice. Not later than ninety days after the receipt of such application, the commissioner shall either approve or reject such application. Such approval or rejection shall be accompanied by a written statement of the reasons for approval or rejection, pursuant to the provisions of this subsection. If the application is approved, the commissioner shall promptly cause a certificate of affordable housing project completion to be published in the Connecticut Law Journal. If the commissioner fails to either approve or reject the application within such ninety-day period, such application shall be deemed provisionally approved, and the municipality may cause notice of such provisional approval to be published in a conspicuous manner in a daily newspaper having general circulation in the municipality, in which case, such moratorium shall take effect upon such publication. The municipality shall send a copy of such notice to the commissioner. Such provisional approval shall remain in effect unless the commissioner subsequently acts upon and rejects the application, in which case the moratorium shall terminate upon notice to the municipality by the commissioner.

(5) For the purposes of this subsection, "elderly units" are dwelling units whose occupancy is restricted by age, "family units" are dwelling units whose occupancy is not restricted by age, and "resident-owned mobile manufactured home park" has the same meaning as provided in subsection (k) of this section.

(6) For the purposes of this subsection, housing unit-equivalent points shall be determined by the commissioner as follows: (A) No points shall be awarded for a unit unless its occupancy is restricted to persons and families whose income

is equal to or less than eighty per cent of the median income, except that unrestricted units in a set-aside development shall be awarded one-fourth point each. (B) Family units restricted to persons and families whose income is equal to or less than eighty per cent of the median income shall be awarded one point if an ownership unit and one and one-half points if a rental unit. (C) Family units restricted to persons and families whose income is equal to or less than sixty per cent of the median income shall be awarded one and one-half points if an ownership unit and two points if a rental unit. (D) Family units restricted to persons and families whose income is equal to or less than forty per cent of the median income shall be awarded two points if an ownership unit and two and one-half points if a rental unit. (E) Restricted family units containing at least three bedrooms shall be awarded an additional one-fourth point. (F) Elderly units restricted to persons and families whose income is equal to or less than eighty per cent of the median income shall be awarded one-half point. (G) If at least sixty per cent of the total restricted units submitted by a municipality as part of an application for a certificate of affordable housing project completion are family units, any elderly units submitted within such application shall be awarded an additional one-half point. (H) Restricted family units located within an approved incentive housing development, as defined in section 8-13m, shall be awarded an additional one-fourth point. (I) A set-aside development containing family units which are rental units shall be awarded additional points equal to twenty-two per cent of the total points awarded to such development, provided the application for such development was filed with the commission prior to July 6, 1995. (J) A mobile manufactured home in a resident-owned mobile manufactured home park shall be awarded points as follows: One and one-half points when occupied by persons and families with an income equal to or less than eighty per cent of the median income; two points when occupied by persons and families with an income equal to or less than sixty per cent of the median income; and one-fourth point for the remaining units.

(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) were 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 per cent of the median income, (C) are located within an approved incentive housing development, as defined in section 8-13m, or (D) are located in a resident-owned mobile manufactured home park.

(8) 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.

(9) A newly-constructed unit shall be counted toward a moratorium when it receives a certificate of occupancy. A newly-restricted unit shall be counted toward a moratorium when its deed restriction takes effect.

(10) The affordable housing appeals procedure shall be applicable to affordable housing applications filed with a commission after a three-year moratorium expires, except (A) as otherwise provided in subsection (k) of this section, or (B) when sufficient unit-equivalent points have been created within the municipality during one moratorium to qualify for a subsequent moratorium.

(11) The commissioner shall, within available appropriations, adopt regulations in accordance with chapter 54 to carry out the purposes of this subsection. Such regulations shall specify the procedure to be followed by a municipality to obtain a moratorium, and shall include the manner in which a municipality is to document the units to be counted toward a moratorium. A municipality may apply for a moratorium in accordance with the provisions of this subsection prior to, as well as after, such regulations are adopted.

(m) The commissioner shall, pursuant to regulations adopted in accordance with the provisions of chapter 54, promulgate model deed restrictions which satisfy the requirements of this section. A municipality may waive any fee which would otherwise be required for the filing of any long-term affordability deed restriction on the land records.

Credits

(1988, P.A. 88-230, § 1; 1989, P.A. 89-311, § 1, eff. July 1, 1990; 1990, P.A. 90-98, § 1; 1993, P.A. 93-142, § 4, eff. June 14, 1993; 1995, P.A. 95-250, § 1; 1995, P.A. 95-280, § 1; 1996, P.A. 96-211, §§ 1, 5, eff. July 1, 1996; 1998, June Sp.Sess., P.A. 98-1, § 84; 1999, P.A. 99-261, §§ 1, 2 eff. June 29, 1999; 2000, P.A. 00-206, § 1; 2002, P.A. 02-87, §§ 1, 3, 4; 2005, P.A. 05-191, § 2; 2010, P.A. 10-32, § 18, eff. May 10, 2010; 2012, June 12 Sp.Sess., P.A. 12-2, § 46; 2013, P.A. 13-234, §§ 11, 150, eff. July 1, 2013; 2017, P.A. 17-170, § 1, eff. July 24, 2017.)

Notes of Decisions (137)

Footnotes

1 C.G.S.A. § 17b-800 et seq.

2 C.G.S.A. § 4-166 et seq.

C. G. S. A. § 8-30g, CT ST § 8-30g

The statutes and Constitution are current with enactments of Public Acts enrolled and approved by the Governor on or before April 29, 2019 and effective on or before April 29, 2019.

End of Document

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Connecticut General Statutes Annotated
Title 8. Zoning, Planning, Housing and Economic and Community Development (Refs & Annos)
Chapter 126A. Affordable Housing Land Use Appeals (Refs & Annos)

C.G.S.A. § 8-30h

§ 8-30h. Annual certification of continuing compliance with affordability requirements. Noncompliance

Currentness

On and after January 1, 1996, the developer, owner or manager of an affordable housing development, developed pursuant to subparagraph (B) of subdivision (1) of subsection (a) of section 8-30g, that includes rental units shall provide annual certification to the commission that the development continues to be in compliance with the covenants and deed restrictions required under said section. If the development does not comply with such covenants and deed restrictions, the developer, owner or manager shall rent the next available units to persons and families whose incomes satisfy the requirements of the covenants and deed restrictions until the development is in compliance. The commission may inspect the income statements of the tenants of the restricted units upon which the developer, owner or manager bases the certification. Such tenant statements shall be confidential and shall not be deemed public records for the purposes of the Freedom of Information Act, as defined in section 1-200.

Credits

(1995, P.A. 95-280, § 2, eff. July 6, 1995; 1997, P.A. 97-47, § 16.)

C. G. S. A. § 8-30h, CT ST § 8-30h

The statutes and Constitution are current with enactments of Public Acts enrolled and approved by the Governor on or before April 29, 2019 and effective on or before April 29, 2019.

Regulations of Connecticut State Agencies
Title 8. Zoning, Planning, Housing, Economic and Community Development and Human Resources
Department of Economic and Community Development
Affordable Housing Land Use Appeals Procedures (Refs & Annos)

Regs. Conn. State Agencies § 8-30g-6

Sec. 8-30g-6. State certificate of affordable housing completion; moratorium on applicability of section 8-30g of the Connecticut General Statutes to certain affordable housing applications

Currentness

- (a) As provided in section 8-30g(l) of the Connecticut General Statutes, certain applications for affordable housing development shall be subject to a moratorium for a period of three years from the publication by the Department of notice of issuance of a state certificate of affordable housing completion, or during a period of qualification for provisional approval of a state certificate of affordable housing completion.
- (b) The chief elected official of any municipality may apply to the commissioner for a state certificate of affordable housing completion.
- (c) An application for a state certificate of affordable housing completion shall include at least the following:
- (1) A letter to the commissioner signed by the chief elected official of the municipality;
 - (2) A letter from an attorney representing the municipality, stating an opinion that the application complies with section 8-30g of the Connecticut General Statutes and this section as in effect on the day the application is submitted;
 - (3) On a form provided by the Department, a summary calculation of the housing unit-equivalent points required of the applicant municipality in order to qualify for a state certificate;
 - (4) Documentation of the existence of the required housing unit-equivalent points, in accordance with the specifications of subsection (e) of this section;
 - (5) The justification for claiming such points, with reference to the descriptions and point schedule set forth in section 8-30g of the Connecticut General Statutes and subsection (i) of this section;
 - (6) Certification by the applicant municipality that for each unit for which housing unit-equivalent points are claimed, a valid certificate of occupancy has been issued by the building official of such municipality and is currently in effect, provided that copies of such certificates of occupancy need not be submitted;

(7) Certification that the municipality has identified and deducted, or otherwise excluded from the total housing unit-equivalent points claimed, all units that as a result of action by the municipality, municipal housing authority, or municipal agency, no longer qualify, as of the date of submission of the application, as providing housing unit-equivalent points, without regard to whether the units were originally constructed before or after July 1, 1990;

(8) All documentation reflecting compliance with the notice, publication, and other procedural requirements set forth in subsection (j) of this section;

(9) A fee sufficient to reimburse the department for its costs of publication of notices as set forth in sections 8-30g-1 to 8-30g-11, inclusive, of the Regulations of Connecticut State Agencies.

(d) The applicant municipality shall bear the costs of application notice, publication, and procedural compliance with respect to an application for a state certificate of affordable housing compliance.

(e) Documentation of the existence of the housing unit-equivalent points necessary to qualify for a state certificate of affordable housing completion shall include the following:

(1) A numbered list of all dwelling units that furnish the basis of housing unit-equivalent points being counted toward the qualifying minimum;

(2) The address of each such unit; and

(3) The housing unit-equivalent points and classification claimed for each such unit.

(f) Each dwelling unit claimed to provide housing unit-equivalent points toward a state certificate of affordable housing completion by virtue of a deed restriction, recorded covenant, zoning regulation, zoning approval condition, financing agreement, affordability plan or similar mechanism shall be documented as an enforceable obligation with respect to both income qualifications and maximum housing payments, that is binding at the time of application for at least the duration required by section 8-30g of the Connecticut General Statutes at the time of the development's submission to a commission, by the submission of a copy of one or more of the following:

(1) Deed restriction or covenant;

(2) Zoning, subdivision or other municipal land use approval or permit containing an applicable condition or requirement;

(3) Report, if less than one (1) year old, submitted to the municipality pursuant to section 8-30h of the Connecticut General Statutes;

(4) Local, state or federal financing, subsidy, or assistance agreement; or

(5) Affordability plan, if adopted by the municipality and made binding.

(g) The commissioner may, in the commissioner's sole discretion, request any additional information deemed necessary to determine the housing unit-equivalent point value of any dwelling unit claimed by the municipality or the applicant municipality's overall calculation of housing unit-equivalent points. The commissioner may also, in the commissioner's sole discretion, accept alternative documentation.

(h) As provided in section 8-30g(l) of the Connecticut General Statutes, the housing unit-equivalent points required for a certificate shall be equal to two percent (2%) of all dwelling units in the municipality, but no less than seventy-five (75) housing unit-equivalent points. Units and housing unit-equivalent points that serve as the basis of approval of a state certificate, whether a provisional approval or issuance by the commissioner, shall not be the basis of a subsequent application. The housing unit-equivalent points necessary for a state certificate shall be calculated using as the denominator the total estimated dwelling units in the municipality as reported in the most recent United States decennial census.

(i) As provided in section 8-30g(l) of the Connecticut General Statutes, dwelling units whose occupancy is restricted to maximum household income limits that comply with section 8-30g of the Connecticut General Statutes and that qualify, based on binding restrictions on maximum sale or resale price or rent, as price-restricted dwelling units in compliance with section 8-30g of the Connecticut General Statutes, shall be awarded unit-equivalent points toward a state certificate as follows:

Type of Unit		Housing Unit-Equivalent Point Value Per Unit
Market-rate units in a set-aside development		0.25
Elderly units, owned or rented, restricted to households at or below 80% of median income		0.50
Family units, owned, that are	80% of median income	1.00
restricted to households with	60% of median income	1.50
annual income no more than:	40% of median income	2.00
Family units, rented, that are	80% of median income	1.50
restricted to households with	60% of median income	2.00
annual income no more than:	40% of median income	2.50

(j) Applications for a state certificate of affordable housing completion shall be submitted and processed as follows:

(1) A municipality intending to submit to the department an application for a state certificate of affordable housing completion shall publish in the Connecticut Law Journal and in a newspaper of general circulation in the municipality a notice of its intent to apply and the availability of its proposed application for public inspection and comment. Such notice shall state the location where the proposed application, including all supporting documentation, shall be available for inspection and comment, and to whom written comments may be submitted. Such application and documentation shall be made available in the office of the municipal clerk for no less than twenty (20) calendar days after publication of notice. If, within the comment period, a petition signed by at least twenty-five (25) residents of the municipality is filed with the municipal clerk requesting a public hearing with respect to the proposed application, either the municipality's legislative body or its zoning or planning commission shall hold such a hearing. A copy of all written comments received, responses by the municipality to comments received, and a description of any modifications made or not made to the application or supporting documentation as a result of such comments, shall be attached to the application when submitted to the commissioner.

(2) As soon as practicable after submission of an application, the department shall notify the applicant in writing whether the application is complete with respect to the information required. If the application is deemed complete, it shall be considered received on the date of original submission. If the application is not complete, the department shall identify in writing the additional information necessary, and the application shall be considered received on the date the department receives the additional information requested. If the applicant fails or refuses to correct any deficiencies within a reasonable time, the department shall deny or reject the application.

(3) If the department requests additional information, the time limits for publishing notice of receipt of the application as specified in subsection (6) of subsection (j) of this section and issuing a decision as specified in section 8-30g of the Connecticut General Statutes shall commence when the department receives the requested information and the application is complete.

(4) After determining that it has received a complete application, the Department shall promptly publish in the Connecticut Law Journal a notice of receipt of such application. Such application, including all supporting documentation, shall be made available to the public. Written public comment shall be accepted by the department for a period of thirty (30) days after such publication.

(5) The department shall evaluate the application, including all documentation submitted and public comments received, to accurately determine the number, classification and housing unit-equivalent points, if any, of all dwelling units claimed. The department shall calculate the total housing unit-equivalent points based on the values assigned in section 8-30g of the Connecticut General Statutes. The department may, as necessary, verify or modify the housing unit-equivalent point total claimed by the municipality. The department shall determine whether the municipality has satisfied the minimum criteria for a state certificate of affordable housing completion. The department shall also determine whether all units which must be deducted or otherwise excluded from total housing unit-equivalent points pursuant to subsection (c)(7) of this section have been properly counted and whether proper adjustment has been made.

(6) The department shall provide the municipality, within ninety (90) days of receipt of a complete application as specified in sections 8-30g-1 to 8-30g-11, inclusive, of the Regulations of Connecticut State Agencies, with a written

decision stating the reasons for approval or rejection, and shall make such decision available to the public. If the department approves the application, it shall publish in the Connecticut Law Journal a notice of its issuance of a state certificate of affordable housing completion.

(k) If the department fails to act within the time set by section 8-30g(1) of the Connecticut General Statutes, the application shall be deemed as having been granted provisional approval. A moratorium shall then take effect upon the date of completion of publication by the municipality of a notice of the provisional approval in both the Connecticut Law Journal and a newspaper with general circulation in the municipality. The latter notice shall be at least one-eighth page, shall be published in a conspicuous manner, and shall clearly use the words "provisional approval." The municipality shall promptly provide the department with a certified copy of the published notice. The department shall act on a provisionally-approved application as soon as practicable. Upon issuing its decision, the department shall issue a written notice to the municipality and shall publish a notice of its decision in the Connecticut Law Journal and a newspaper with general circulation in the municipality. The provisionally- approved moratorium shall terminate upon issuance of written notice of disapproval to the municipality. Dwelling units claimed toward a state certificate of affordable housing completion that is provisionally approved, or provisionally approved and later denied by the department, may be claimed again on a subsequent application, so long as the moratorium resulting from provisional approval was in effect for less than one hundred eighty (180) days.

(l) The commissioner may revoke a state certificate of affordable housing completion at any time upon determining, after written notice to the municipality and a reasonable opportunity for response or explanation, that an application contained materially false, misleading, or inaccurate information or was otherwise approved without compliance with the criteria of Section 8-30g and sections 8-30g-1 to 8-30g-11, inclusive, of the Regulations of Connecticut State Agencies. The commissioner shall issue written notice of a decision to revoke a certificate of affordable housing completion and shall publish a notice of revocation in the Connecticut Law Journal. Such revocation shall be effective upon issuance of written notice to the municipality. Use of dwelling units and housing unit-equivalent points claimed toward a certificate of affordable housing that is approved and later revoked pursuant to this subsection shall be at the sole discretion of the commissioner. If a municipality, in the judgment of the commissioner, knowingly or intentionally misrepresented any portion of an application for a state certificate, the commissioner may, in addition to revocation, refuse to approve a re-application for a state certificate for up to three (3) years from revocation.

(m) The department shall prepare and update periodically a list of all municipalities that have been issued a state certificate of affordable housing completion or have obtained provisional approval by publication of valid notices. Such list shall identify the expiration date of each state certificate or provisional approval. The department shall make such list available to the public. Such list shall be updated each time a municipality is issued a certificate or obtains provisional approval.

(n) A municipality that has been issued a state certificate of affordable housing completion may, at any time, submit an application for another moratorium, provided that such application shall be considered a new application, shall comply in full with these regulations, and may not utilize any dwelling unit that provided housing unit-equivalent points for any previous state certificate. Any application intended to maintain a moratorium without interruption at the expiration of a previously-approved state certificate shall be submitted so as to allow the department sufficient time to process the application in accordance with these regulations.

Credits

(Added effective April 29, 2002; Amended effective May 3, 2005.)

<Statutory Authority: C.G.S.A. § 8-30g>

Current with material published on the CT eRegulations System through 5/7/2019.

Regs. Conn. State Agencies § 8-30g-6, CT ADC § 8-30g-6

End of Document

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Connecticut General Statutes Annotated
Title 4. Management of State Agencies
Chapter 54. Uniform Administrative Procedure Act (Refs & Annos)

C.G.S.A. § 4-176

§ 4-176. Declaratory rulings. Petitions. Regulations

Currentness

(a) Any person may petition an agency, or an agency may on its own motion initiate a proceeding, for a declaratory ruling as to the validity of any regulation, or the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency.

(b) Each agency shall adopt regulations, in accordance with the provisions of this chapter, that provide for (1) the form and content of petitions for declaratory rulings, (2) the filing procedure for such petitions and (3) the procedural rights of persons with respect to the petitions.

(c) Within thirty days after receipt of a petition for a declaratory ruling, an agency shall give notice of the petition to all persons to whom notice is required by any provision of law and to all persons who have requested notice of declaratory ruling petitions on the subject matter of the petition.

(d) If the agency finds that a timely petition to become a party or to intervene has been filed according to the regulations adopted under subsection (b) of this section, the agency: (1) May grant a person status as a party if the agency finds that the petition states facts demonstrating that the petitioner's legal rights, duties or privileges shall be specifically affected by the agency proceeding; and (2) may grant a person status as an intervenor if the agency finds that the petition states facts demonstrating that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings. The agency may define an intervenor's participation in the manner set forth in subsection (d) of section 4-177a.

(e) Within sixty days after receipt of a petition for a declaratory ruling, an agency in writing shall: (1) Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified circumstances, (2) order the matter set for specified proceedings, (3) agree to issue a declaratory ruling by a specified date, (4) decide not to issue a declaratory ruling and initiate regulation-making proceedings, under section 4-168, on the subject, or (5) decide not to issue a declaratory ruling, stating the reasons for its action.

(f) A copy of all rulings issued and any actions taken under subsection (e) of this section shall be promptly delivered to the petitioner and other parties personally or by United States mail, certified or registered, postage prepaid, return receipt requested.

(g) If the agency conducts a hearing in a proceeding for a declaratory ruling, the provisions of subsection (b) of section 4-177c, section 4-178 and section 4-179 shall apply to the hearing.

(h) A declaratory ruling shall be effective when personally delivered or mailed or on such later date specified by the agency in the ruling, shall have the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of section 4-183. A declaratory ruling shall contain the names of all parties to the proceeding, the particular facts on which it is based and the reasons for its conclusion.

(i) If an agency does not issue a declaratory ruling within one hundred eighty days after the filing of a petition therefor, or within such longer period as may be agreed by the parties, the agency shall be deemed to have decided not to issue such ruling.

(j) The agency shall keep a record of the proceeding as provided in section 4-177.

Credits

(1971, P.A. 854, § 11, eff. Jan. 1, 1972; 1973, P.A. 73-620, § 8, eff. June 11, 1973; 1982, P.A. 82-349, § 3, eff. July 1, 1982; 1982, P.A. 82-472, § 178, eff. July 1, 1982; 1988, P.A. 88-317, § 10, eff. July 1, 1989.)

Notes of Decisions (63)

C. G. S. A. § 4-176, CT ST § 4-176

The statutes and Constitution are current with enactments of Public Acts enrolled and approved by the Governor on or before April 29, 2019 and effective on or before April 29, 2019.



Application for Certificate of Affordable Housing Completion

Office of the First Selectman

Westport Town Hall

110 Myrtle Avenue, Westport Connecticut 06880

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WESTPORT, CONNECTICUT

OFFICE OF THE FIRST SELECTMAN

James S. Marpe, First Selectman

December 5, 2018

Evonne Klein, Commissioner
CT Department of Housing
505 Hudson Street
Hartford, CT 06106

RE: Application for Certificate of Affordable Housing Completion

Dear Commissioner Klein,

This application includes documentation for ten affordable housing residential developments in the Town of Westport.

The Certificate of Affordable Housing Completion requires proof of "housing unit equivalent points" (HUE points) of no less than 2% of 10,399 (total housing units in the Town), or **207.98 points**. This Application for the State Certificate provides documentation and justification for 199 units in set-aside developments of which 127 units are affordable and 72 units are market rate.

Justification for **220.25 HUE points** has been submitted with this Application. The Town has additional available qualified units for HUE points that will be used for a future Certificate application.

I am very proud of the accomplishments Westport has made toward the State's goal of Affordable Housing. In my five years serving the Executive branch of town government, I have witnessed a dramatic improvement in the quality and quantity of our Affordable Housing stock.


Documentation in this application has been reviewed and certified by our Assistant Town Attorney, Nicholas Bamonte. The application was compiled and assembled by the Westport Planning and Zoning staff. Attorney Bamonte and our P&Z staff can be made available to answer any of your questions or to provide additional information. Please feel free to contact them at the phone numbers and/or the email addresses listed below:

Nicholas Bamonte, Esq. (203) 227-9545 nbamonte@berchemmoses.com

Mary Young, Director (203) 341-1078 maryyoung@westportct.gov

I appreciate your consideration and review of this matter and I look forward to hearing from you. Please feel free to contact me directly if you need additional information.

Sincerely,


James S. Marpe
First Selectman



BERCHEM MOSES.COM

Robert L. Berchem
Marsha Belman Moses
Stephen W. Studer □
Richard J. Buturla
Floyd J. Dugas
Rolan Joni Young
Ira W. Bloom
Jonathan D. Berchem □
Michelle C. Laubin ♦
Gregory S. Kimmel
Christopher M. Hodgson
Christine Owens Morgan
Mario F. Coppola
Meredith G. Diette
Ryan P. Driscoll ♦
Bryan L. LeClerc ♦
Brian A. Lima
Douglas E. LoMonte
Brian W. Smith
Christine A. Sullivan

Paula N. Anthony ♦
Ifred P. Bruno
Jacob P. Bryniczka
Eileen Lavigne Flug
Peter V. Gelderman ◊
Warren L. Holcomb ♦
Desi Imetovski
Eugene M. Kimmel

Nicholas R. Bamonte
Eric Barba ♦
Richard C. Buturla
Carolyn Mazanec Dugas
Matthew D. Glennon
Rebecca E. Goldberg
John Y. Khalil
Justin Stanko
Matthew L. Studer
Christopher J. Sugar

■ - Also Admitted in CA
◊ - Also Admitted in IL
□ - Also Admitted in MA
♦ - Also Admitted in NJ
◆ - Also Admitted in NY
◻ - Also Admitted in PA

PLEASE REPLY TO
WESTPORT OFFICE

75 Broad Street
Milford, CT 06460
T: 203.783.1200
F: 203.878.2235

1221 Post Road East
Westport, CT 06880
T: 203.227.9545
F: 203.226.1641

Commissioner Evonne Klein
State of Connecticut Department of Housing
505 Hudson Street
Hartford, CT 06106-7106

December 5, 2018

Re: Application for Certificate of Affordable Housing Completion/Moratorium –
Town of Westport, Connecticut

Dear Commissioner Klein:

This letter will constitute the certification required by §8-30g-6(c)(2) of the Regulations of Connecticut State Agencies regarding the accompanying Application for State Certification of Affordable Housing Completion (hereafter "Application") which is being submitted by the Town of Westport (hereafter "Town").

In my opinion, the Application complies with the provisions of Conn. Gen. Stat. §8-30g and with §8-30g-6 of the Regulations of Connecticut State Agencies in effect on the day that the Application is being submitted.

By way of background, I have reviewed the statistical information, calculations, and historical information provided to me regarding the ten (10) affordable housing developments submitted as part of this Application, focusing on dates of certificates of occupancy and income requirements as set forth in the governing laws.

The following summarizes the ten (10) referenced developments.

1. **Rotary Centennial House**

Address: 10 West End Avenue

Total Units: 6

Affordable Units: 6

Affordability Requirements: Units will be rented to families whose income does not exceed 80% of the state median income.

2. Bradley Commons

Address: 19 Indian Hill Road/3 Bradley Lane/86 Saugatuck Avenue

Total Units: 20

Affordable Units: 4

Affordability Requirements: Units will be sold to families whose income does not exceed 80% of the state median income.

3. Saugatuck Center (aka Gault site)

Address: 575 Riverside Avenue, 1 Ketchum Street and 580 Riverside Avenue

Total Units: 27

Affordable Units: 5

Affordability Requirements: Units will be rented to families whose income does not exceed 80% of the state median income.

4. Bedford Square

Address: Post Road East

Total Units: 26

Affordable Units: 5

Affordability Requirements: Units will be rented to families whose income does not exceed 80% of the state median income.

5. 20 Cross Street

Address: 20 Cross Street

Total Units: 10

Affordable Units: 10

Affordability Requirements: Three (3) units will be sold to families whose income does not exceed 80% of the state median income. Seven (7) units are market rate and part of a set-aside development.

6. Coastal Point

Address: 1135 Post Road East

Total Units: 12

Affordable Units: 2

Affordability Requirements: Units will be rented to families whose income does not exceed 80% of the state median income.

7. **1177 Greens Farms**

Address: 1177 Post Road East

Total Units: 94

Affordable Units: 94

Affordability Requirements: Fifteen (15) units will be rented to families whose income does not exceed 60% of the state median income. Fourteen (14) units will be rented to families whose income does not exceed 80% of the state median income. Sixty-five (65) units are market rate and part of a set-aside development.

8. **Sasco Creek**

Address: 1655 Post Road East

Total Units: 54

Affordable Units: 54 (31 are included in the Application because 23 are replacements)

Affordability Requirements: Fourteen (14) units will be rented to families whose income does not exceed 40% of the state median income. Seventeen (17) units will be rented to families whose income does not exceed 60% of the area median income, qualifying as units in a set-aside development.

9. **Hale's Court**

Address: 1-79 Hales Court

Total Units: 78

Affordable Units: 78 (38 included in Application because 40 are replacements)

Affordability Requirements: Twenty-six (26) units will be rented to families whose income does not exceed 40% of the state median income. Twelve (12) units will be rented to families whose income does not exceed 80% of the state median income.

10. **Hidden Brook**

Address: 1655 Post Road East

Total Units: 39

Affordable Units: 39 (4 included in the Application because 35 are replacements)

Affordability Requirements: Units will be rented to families whose income does not exceed 80% of the state median income.

Sincerely,



Nicholas R. Bamonte, Esq.

AFFORDABLE HOUSING MORATORIUM DATA - Westport, Connecticut

- Moratorium eligibility for any CT municipality is based on providing proof that the municipality has accumulated a required number of Housing Unit-Equivalent points (HUE's).
- The required number of HUE points is determined by multiplying the total number of dwelling units within the municipality (per the 2010 US Census) by 2%:

10,399 dwelling units X 2% = 207.98 HUE points required for Westport

- **HUE Points are calculated as follows:**
 - Family units sold to persons @ 80% or less state median income = 1.00 points
 - Family units sold to persons @ 60% or less state median income = 1.50 points
 - Family units sold to persons @ 40% or less state median income = 2.00 points
 - Family units rented to persons @ 80% or less state median income = 1.50 points
 - Family units rented to persons @ 60% or less state median income = 2.00 points
 - Family units rented to persons @ 40% or less state median income = 2.50 points
 - Market rate units in a set-aside development (under §8-30g of the CGS) = 0.25 points
- HUE Points may only be counted for units that were issued Certificates of Occupancy after July 1, 1990 (effective date of the adoption of the §8-30g statutes).
- "Assisted housing" can be eligible for HUE points if it can be proven that the income restrictions and duration of restrictions are at least equivalent to the restrictions in the §8-30g law in effect at the time of submission of the application for development to the P&Z Commission.
- The calculation of HUE points for a Westport moratorium includes credit for qualifying residential units from the following existing developments:

<u>Name, Address</u>	<u>Points</u>
➤ Rotary Centennial House, 10 West End Avenue	9.00 points
➤ Bradley Commons, Bradley Lane (all)	4.00 points
➤ Saugatuck Center, 575 and 580 Riverside Avenue	7.50 points
➤ Bedford Square, 59 Post Road East	7.50 points
➤ 20 Cross Street, 20 Cross Street	4.75 points
➤ Coastal Point, 1135 Post Road East	3.00 points
➤ 1177 Greens Farms, 1177 Post Road East	67.25 points
➤ Sasco Creek, 1655 Post Road East	24.25 points
➤ Hale's Court, 1-79 Hales Court	83.00 points
➤ Hidden Brook, 1655 Post Road East	10.00 points

TOTAL Housing Unit-Equivalent points needed: 207.98 points

TOTAL Housing Unit-Equivalent points claimed for this application: 220.25 points

If approved by the CT Dept of Housing, a moratorium on the acceptance of new §8-30g (set-aside) applications in Westport would be in place for four years from the date of the DOH approval, starting on the publication date of the DOH posting of a legal notice of decision in the Connecticut Law Journal.

A Moratorium does not affect the development of new non-§8-30g developments (such as residential developments owned by a municipal housing authority).

To be inserted in
The Westport News
On: November 9, 2018
Friday

**TOWN OF WESTPORT
OFFICE OF THE FIRST SELECTMAN**

LEGAL NOTICE

**NOTICE OF INTENT TO APPLY FOR A STATE CERTIFICATE OF
AFFORDABLE HOUSING COMPLETION**

Notice is hereby given that the Town of Westport, Connecticut intends to file an Application for Certificate of Affordable Housing Completion (moratorium on the applicability of Section 8-30g) with the Department of Housing of the State of Connecticut, pursuant to Section 8-30g(1)(4)(B) of the Connecticut General Statutes.

The proposed application, including all supporting documentation, is available for public inspection and comment in the Office of the Town Clerk, Town Hall, 110 Myrtle Avenue, Room 105, Westport, Connecticut, from 8:30 a.m. to 4:30 p.m. weekdays. Written comments may be submitted to Mary Young, Planning and Zoning Director, at the Planning and Zoning Office in Town Hall, 110 Myrtle Avenue Room 203, within 20 days of the publication of this notice in the Westport News and the Connecticut Law Journal. A copy of all written comments received and responses prepared by the municipality will be included as part of the application to the Department of Housing.

OFFICE OF THE FIRST SELECTMAN
Town of Westport

By: Jim Marpe

Dated: November 8, 2018

LEGAL NOTICES

LEGAL NOTICE OF MEETING

Notice is hereby given that the Westport Parks and Recreation Commission will hold a meeting Wednesday, November 14, 2018 at 7:30 p.m. in the Town Hall Auditorium to consider the following:

1. Approval of Minutes: October 17, 2018
2. Public Comment
3. Reports of:
 - * Boating Advisory Committee
 - * Golf Advisory Committee
 - * Parks Advisory Committee
 - * Racquets Advisory Committee
4. To take such action as the meeting may determine to approve fees for the Longshore Sailing School for the 2019 season.
5. To take such action as the meeting may determine relative to recommended fee changes for Parks and Recreation programs and activities.
6. Compo Beach Season Review. (Discussion Only)
7. Commissioners' Report
8. Administrative Update

Charles Haberstroh, Chairman
Parks and Recreation Commission

TOWN OF WESTPORT OFFICE OF THE FIRST SELECTMAN

LEGAL NOTICE

NOTICE OF INTENT TO APPLY FOR A STATE CERTIFICATE OF AFFORDABLE HOUSING COMPLETION

Notice is hereby given that the Town of Westport, Connecticut intends to file an Application for Certificate of Affordable Housing Completion (moratorium on the applicability of Section 8-30g) with the Department of Housing of the State of Connecticut, pursuant to Section 8-30g(j)(4)(B) of the Connecticut General Statutes.

The proposed application, including all supporting documentation, is available for public inspection and comment in the Office of the Town Clerk, Town Hall, 110 Myrtle Avenue, Room 105, Westport, Connecticut, from 8:30 a.m. to 4:30 p.m. weekdays. Written comments may be submitted to Mary Young, Planning and Zoning Director, at the Planning and Zoning Office in Town Hall, 110 Myrtle Avenue, Room 203, within 20 days of the publication of this notice in the Westport News and the Connecticut Law Journal. A copy of all written comments received and responses prepared by the municipality will be included as part of the application to the Department of Housing.

OFFICE OF THE FIRST SELECTMAN
Town of Westport

By: Jim Marpe
Dated: November 8, 2018



Yale Law School

ANIKA SINGH LEMAR

Clinical Associate Professor of Law

January 2, 2019

VIA FEDEX AND
FACSIMILE

The Hon. Evonne M. Klein
Commissioner
State of Connecticut
Department of Housing
505 Hudson Street
Hartford, CT 06106-7106

Re: Notice Defect in Westport's Notice of Intent To Apply for State Certificate of Affordable Housing Completion

Dear Commissioner Klein:

I write in connection with the Town of Westport's application for a four-year moratorium on Connecticut General Statutes § 8-30g applications, which has now been filed with the Department of Housing ("DOH") pursuant to § 8-30g(l). While a letter regarding Westport's points eligibility for a moratorium will be sent to you under separate cover, I write today regarding Westport's failure to provide, in its November 13, 2018 Notice of Intent to Apply for a State Certificate of Affordable Housing Completion ("Moratorium Notice"),¹ notice of the public hearing-petition procedure available to its residents pursuant to Regs. Conn. State Agencies § 8-30g-6(j)(1). Westport's failure to notify its residents of their opportunity to request a public hearing has deprived them and other potentially interested persons of the option of a public hearing that is required by § 8-30g-6(j)(1) and makes the Moratorium Notice defective. I alerted

¹ The Moratorium Notice, which was published in the *Connecticut Law Journal* on November 13, 2018, is attached hereto as Exhibit A.

Westport to this defect on November 30, 2018, and the Town's filing with the Department² appears to show that the comment has been ignored. Accordingly, we ask DOH to deny Westport's application for a moratorium without prejudice until such time as Westport complies at the Town level with the notice requirements of § 8-30g-6(j)(1) and resubmits to DOH.

Regs. Conn. State Agencies § 8-30g-6(j)(1) provides (emphasis added):

A municipality intending to submit to the department an application for a state certificate of affordable housing completion shall publish in the Connecticut Law Journal and in a newspaper of general circulation in the municipality a notice of its intent to apply and the availability of its proposed application for public inspection and comment. Such notice shall state the location where the proposed application, including all supporting documentation, shall be available for inspection and comment, and to whom written comments may be submitted. Such application and documentation shall be made available in the office of the municipal clerk for no less than twenty (20) calendar days after publication of notice. **If, within the comment period, a petition signed by at least twenty-five (25) residents of the municipality is filed with the municipal clerk requesting a public hearing with respect to the proposed application, either the municipality's legislative body or its zoning or planning commission shall hold such a hearing.** A copy of all written comments received, responses by the municipality to comments received, and a description of any modifications made or not made to the application or supporting documentation as a result of such comments, shall be attached to the application when submitted to the commissioner.

Westport's November 13 Moratorium Notice contained the first two parts, but did not advise its residents of their right to petition, within the 20-day comment period, for a public hearing regarding Westport's application for a moratorium.

Compliance with all applicable regulatory requirements is a precondition to the filing of a moratorium application. In other contexts, the courts have held that a requirement for notice of a

² The Department's Public Notice of Receipt of a Completed Application for a Moratorium, attached hereto as Exhibit B, was published in the *Connecticut Law Journal* on December 25, 2018.

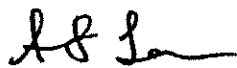
right implicitly requires that the notice disclose how that right can be exercised. *See e.g., Nathan Hale Apartments v. Mortenson*, No. SPN 960724513NB, 1996 WL 727330, at *2 (Conn. Super. Ct., 1996 WL 727330) (Beach, J.) (holding that, while not expressly required in Connecticut General Statutes § 47a-15, pretermination notices should contain a statement of the right to cure because “the right to remedy problems would be meaningless without notice of the right.”). By omitting any reference to the petition / hearing procedure, Westport failed to provide its residents with adequate notice of how they could be heard.

It is unlikely that Westport residents without specific knowledge of how to research state regulations about the § 8-30g moratorium process would discover the petition procedure on their own. Indeed, the language of the Moratorium Notice would lead any interested resident to believe that the *only* means of participating in Westport's moratorium application would be to submit written comments to the Director of Planning and Zoning within 20 days of publication of the Moratorium Notice. In other words, the Town's November 13 Moratorium Notice was both incomplete *and* misleading. Moreover, there is no reference in the application materials to the § 8-30g-6(j)(1) public hearing petition procedure.

Because Westport's notice did not fully meet the notice requirements of §8-30g-6(j)(1), the Department should deny the moratorium application without prejudice as premature until proper local notice has been given.

Do not hesitate to contact me if you have any questions. Thank you for your time.

Sincerely,



Anika Singh Lemar



Yale Law School

ANIKA SINGH LEMAR

Clinical Associate Professor of Law

January 23, 2019

State of Connecticut
Department of Housing
505 Hudson Street
Hartford, CT 06106-7106
Attn: Michael Santoro, Acting Commissioner
By Federal Express
By Facsimile to (860) 706-5741

Dear Commissioner Santoro,

I write in connection with the Town of Westport's pending application for a moratorium pursuant to section 8-30g(l) of the Connecticut General Statutes. I write on my own behalf and on behalf of my client, the Open Communities Alliance ("OCA"). OCA is a Connecticut-based civil rights organization that promotes access to opportunity for all people through education, organizing, advocacy, research, and partnerships. OCA and I strongly support the granting of moratoria when towns meet the requirements set forth in Section 8-30g of the Connecticut General Statutes and the associated regulations. As you know, the moratorium provision set forth at Section 8-30g(l) awards points for particular developments that meet the statutory criteria, including application of deed restrictions of minimum duration that set out minimum affordability requirements. This letter describes my analysis of Westport's application and its calculation of housing unit-equivalent (HUE) points.

I. Without further information from the Town, no points are allocable to Rotary Centennial House.

A. The Town has not established the duration of the deed restriction as required by Section 8-30g(a)(6).

Section 8-30g(a)(6) of the Connecticut General Statutes requires set-aside units to be deed-restricted for a period of no less than forty (40) years. In the case of Rotary Centennial House, as set forth at Volume 2923, Page 343 of the Land Records, the Declaration and Agreement of Restrictive Covenants expires when "the Mortgage Loan is fully paid." The Town's application does not include the term of the mortgage or establish whether the mortgage can be prepaid so as to cut short the deed restriction.

II. The Town miscalculates the points allocable to the redevelopment of Sasco Creek, Hale's Court, and Hidden Brook.

These three developments are all redevelopment projects. Section 8-30g(l)8 requires that points be subtracted for any units that existed prior to redevelopment. The lost points are calculated just as new points are calculated, which requires that the Town document the affordability levels and other restrictions allocable to the units that existed prior to redevelopment. Unfortunately, Westport has provided no documentation related to the demolished units and it is very difficult to decipher, based on the insufficient information provided, to know how many, if any, points are allocable to these three developments. I do my best below.

A. Sasco Creek

In the case of Sasco Creek, the Town attempts to claim points for building two (2) new units that were in fact replacements for two (2) units lost to fire. The narrative and the table at Tab C.8 acknowledge that the Town is not entitled to points for these two (2) units as they simply replaced units that predated 1990. Unfortunately, the table set forth at Tab B.1 claims points for these units. These five (5) points must be deducted from Westport's claimed total.

In addition, according to Attorney Bamonte's cover letter, only fourteen (14) of the units in the redeveloped Sasco Creek are affordable, as defined in Section 8-30g. I assume, therefore, that forty (40) are market-rate. The development is, therefore, twenty-six percent (26%) affordable. Thus, the development does not constitute a "set-aside development," and the market rate units are not eligible for moratorium points. Another four and one-quarter (4.25) points must be deducted from Westport's claimed total. Notwithstanding Attorney Bamonte's cover letter, the restrictive covenant included in the exhibits specifies that just thirteen (13) units are market-rate. If Attorney Bamonte's cover letter is simply incorrect, these points may be included.

B. Hale's Court

The original Hale's Court consisted of forty (40) units. The new Hale's Court consists of seventy-eight (78) units.

Westport's zoning code requires that a portion of the new Hale's Court be dedicated as senior housing. On information and belief, forty (40) of the units in the new Hale's Court are senior housing. Provided that they are limited to tenants whose income does not exceed eighty percent (80%) of the statewide median, these units are entitled to one-half point per unit, or twenty (20) total HUE points.¹ The restrictive covenant establishes that

¹ Because so many of Westport's HUE points come from redevelopment projects that actually replaced affordable family units with market rate units and/or elderly units, it is not the case that over sixty percent (60%) of the units that are the subject of this application are not limited to elderly tenants. Using the net numbers, at most forty percent (40%) of the units are family. As a result, the provision regarding one point

some portion of the seventy-eight (78) units are available at sixty percent (60%) of area median income, which exceeds eighty percent (80%) of statewide median income, rendering these units "market rate" for the purposes of this analysis. Twenty-six (26) of the units are available to families whose income does not exceed forty percent (40%) of statewide median income, resulting in sixty-five (65) HUE points. Twelve (12) units are available to families whose income does not exceed eighty percent (80%) of statewide median income, resulting in twenty-one (21) HUE points.² Assuming that none of the senior units is market-rate units, the total points allocable to the new development - before deducting the points allocable to the original development - is one hundred and twenty-six (126) HUE points. Notably the application is not at all clear that all of the elderly units are restricted to tenants whose income does not exceed eighty percent (80%) of the statewide median. As a result, it is likely that my calculation "double counts" units and overestimates the points to which Westport entitled.

The original units, predating 1990, were not restricted to elderly tenants and, in fact, all of the units had at least two bedrooms. All of the original units were restricted to tenants whose income did not exceed eighty percent (80%) of the statewide median. As a result, the Town must deduct from its calculation the sixty (60) points allocable to the lost units. The net points allocable to Hale's Court is then sixty-six (66) HUE points, not eighty-three (83) as the Town claims.

In brief, the Town claims that all of the elderly units that exist today replace elderly units that existed in 1990, but the original Hale's Court had no such restriction. In addition, the Town assumes that any market-rate units at the new Hale's Court replace units that were also market rate but this is simply not possible. The Town must revisit the HUE points allocable to the original Hale's Court, tabulate the points allocable to the new Hale's Court, and calculate the net point gain or loss, as the case may be.

C. Hidden Brook

It is unclear why the Town believes it is entitled to points for Hidden Brook. By describing the new units as "replacement units," it acknowledges that thirty-five (35) affordable units existed prior to 1990. In the redeveloped complex there are thirty-nine (39) units, only four (4) of which are affordable as defined in Section 8-30g. The rest are deed-restricted, but at a level considered market rate for the purposes of the statute. As a result, the Town lost thirty-one (31) affordable units and ought to deduct points. Because the Town includes no details about the original housing development, it is unclear what the total number of deducted points ought to be. It is clear, however, that the Town is not entitled to six (6) points for this redevelopment.

elderly units set forth at Section 8-30g(1)(6) of the Connecticut General Statutes does not apply and the elderly units are allocated one-half point per unit.

² The affordability requirements in the zoning approval do not match those in the affordability plan. The Town uses the more favorable (for the purposes of HUE points calculation) zoning approval requirements. I use those as well but note that fewer points would be allocated if the affordability plan were instead used.

III. Units at Bradley Center, Saugatuck Center, Bedford Square, and Coastal Point are not eligible for moratorium points.

Moratorium points are available only for units located "affordable housing developments."³ These four developments are not "affordable housing developments," as defined in Section 8-30g. Affordable housing developments must be either "assisted housing" or "set-aside developments." These four developments are not assisted housing. They are affordable housing developments only if they meet the definition of a set-aside development. At least thirty percent (30%) of the units in a set-aside development must be deed-restricted affordable housing. These four developments do not qualify as set-aside developments because, in each of them, the percentage of affordable units is less than thirty percent (30%). Because section 8-30g(l) limits moratorium point eligibility to units located in affordable housing developments, units in those developments are not eligible for moratorium points. As a result, forty-nine and one-quarter (49.25) points should be deducted from Westport's claimed total.

IV. Westport has not included documents sufficient to establish ongoing compliance with statutory and regulatory requirements.

The statute clearly requires evidence of affordability compliance as of the date of the moratorium application. Unfortunately, the application is incomplete and confusing in some respects. In many cases, the Town fails to include a deed restriction, thus failing to establish that the units are, in fact, deed-restricted as required by Section 8-30g(6). In Tab 4 the Town includes several pages setting out income limitations applicable to certain HUD programs, but not to 8-30g. The affordability plans provided for Bradley Commons and Bedford Square are incomplete. Even where the affordability plans are provided in full, the Town has included no evidence that these plans were recorded on the land records or of ongoing compliance with those plans. None of the annual reports required by Section 8-30h is included. In connection with home ownership projects, we are not told what the sales prices were or are. All of these documents should be on file with the Town and we encourage the Department to request them, as permitted by 8-30g-6(g) of the Regulations of Connecticut State Agencies.

V. The Town's public notice was defective.

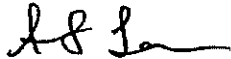
The Town has included at Tab D my letter challenging the Town's public notice. In order to properly provide Westport residents and others an opportunity to be heard, the notice should have included a description of public participation opportunities set out in the statute and regulations.

³ "The commissioner shall issue a certificate of affordable housing project completion for the purposes of this subsection upon finding that there has been completed within the municipality one or more affordable housing developments which create housing unit-equivalent points equal to the greater of two per cent of all dwelling units in the municipality, as reported in the most recent United States decennial census, or seventy-five housing unit-equivalent points." C.G.S. § 8-30g(l)(4)(A).

Thank you for your attentive review of Westport's application. I have now reviewed every moratorium application that has been submitted since 2014 and have submitted formal written comments regarding most of them. In at least one case, the application was unassailable and, as a result, I did not submit comments. By contrast, of the applications I have reviewed, this is one of the least carefully compiled and documented.

We congratulate the Town on the units of housing it has developed. If you have any questions, please call me at (203) 432-4022 or e-mail me at anika.lemar@yale.edu.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anika Singh Lemar', with a stylized, cursive script.

Anika Singh Lemar

January 18, 2019

VIA FEDEX

Hon. Evonne Klein
Commissioner, Connecticut Department of Housing
505 Hudson Street
Hartford, CT 06106

Re: Application of Town of Westport for a Certificate of Affordable Housing Completion

Dear Commissioner Klein:

This office represents Greens Farms Developers LLC and Morningside Homes LLC. Both companies own real estate in Westport on which they intend to construct affordable housing under C.G.S. § 8-30g.

Please consider this letter as public comment pursuant to C.G.S. § 8-30g(l)(4)(B) with respect to the captioned Application for Certificate of Affordable Housing Completion (the "Application").

1. *Introduction*

For the reasons stated in this letter, the Application mis-applies applicable law concerning unrestricted units in set aside developments, improperly calculates points where new affordable units replace pre-existing restricted units, and includes basic math errors. These flaws and errors result in overstatements of point totals. The Town of Westport does not in fact qualify for a Certificate of Affordable Housing Completion at this time.

While this letter assumes familiarity with the provisions of Subsection (l) of Section 8-30g, one aspect of the statutory scheme is particularly pertinent here, and merits discussion. That is the distinction between State Median Income ("SMI") and Area Median Income ("AMI"). As the Application acknowledges, the income standard applicable in Westport for purposes of C.G.S. § 8-30g is SMI, not AMI. In a number of relevant instances, the Application refers to percentages of AMI without making it clear whether or to what extent the equivalent SMI percentage would qualify a unit for Housing Unit-Equivalency Points ("points"). In this letter, AMI percentages are converted to SMI percentages by dividing AMI percentages by .71.¹ The

¹ C.G.S. § 8-30g(a)(7) defines median income as "the lesser of state median income or area median income for the area in which the municipality . . . is located, as determined by the United States Department of Housing and

Hon. Evonne Klein
January 18, 2019
Page 2

Town appears to agree with this formula. *See e.g.*, Application Section C.10, p. 2 (stating that 60% of AMI is about 84% of SMI).

2. *Math Error*

One basic and clear error in the Application involves simple math. The Town claims 220.25 points. But the total of all the points claimed in the ten subsections of Section C of the Application – which is the portion containing the substantive discussion and analysis of each of the ten claimed point-generating projects – is only 213.25 points.

The discrepancies concern Sasco Creek (Section C.8) and Hidden Brook (Section C.10). A review of the summary calculation set forth in Section B1 of the Application – in which the points claimed for each project are summarized and totaled – shows that, for both of these projects, the Section B.1 summary calculation claims more points than are actually claimed in the substantive part of the Application relating to those same applications.

Specifically, the Section B.1 summary line item for Sasco Creek overstates by 3 points the amount actually claimed for Sasco Creek in the detailed analysis stated in Section C.8. Similarly, for Hidden Brook, the summary line item overstates by 4 points the amount actually claimed for Hidden Brook in the detailed analysis stated in Section C.10. The total resulting overstatement, therefore, is 7 points.

3. *Sasco Creek*

The Application further overstates by 4.25 the points properly attributable to the Sasco Creek project. The Town claims 4.25 points for what it mis-describes as 17 “unrestricted” units. C.G.S. § 8-30g(1)(6)(A) allows .25 points for “unrestricted units” in set-aside developments. But these 17 units are not “unrestricted.” On the third page of Section C.8, the Town acknowledges that those 17 units are “restricted to 60% area median income . . .” While 60% of AMI is more than 80% of SMI² and, therefore, the units do not qualify as affordable units under § 8-30g, they are still income “restricted.” In no sense of the word are they “unrestricted.” Under the plain language of the statute, accordingly, no points may be ascribed to those 17 units.

Urban Development.” (emphasis added). According to a current version of the HUD website, SMI is \$96,300. <https://www.huduser.gov/portal/datasets/il/il2018/2018MedCalc.odn>. AMI for Fairfield County is \$134,000. https://www.ct.gov/doh/lib/doh/state_median_2018.pdf. In Westport, accordingly, SMI is controlling.

² See discussion above re. conversion of AMI percentages to SMI percentages.

Hon. Evonne Klein
January 18, 2019
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4. *Hales Court.*

The Application claims 83 points for Hales Court. But it is able to arrive at this total only by using a method of calculating points that is unreasonable and contrary to Section 8-30g.

The problem arises from the fact that, as the Town acknowledges, the current Hales Court project is a redevelopment of a pre-existing affordable housing project, which was demolished (according to the Application) in approximately 2012. The current project consists of 78 units, but it replaced a pre-existing, pre-1990³ affordable housing project consisting of 40 units. The Town acknowledges it is entitled to points only for the 38 "additional" units.⁴

The flaw in the Town's methodology is that it cherry picks which units to designate as the point-generating "additional" units, and which ones to designate as non-point-generating "replacement" units. It arbitrarily claims that the "replacement" units are whichever units would earn the least points, and that the "additional" units that count towards its point total are whichever units earn the most points.

The final page of Section C.9 contains an explicit acknowledgment, in fn. 2, that the Town selects the units to deem as point-generating "additional" units on no basis other than how to most inflate its point total. That footnote states explicitly that the units it deems as "replacement units" are so designated *only* because they are the units that, if they were eligible to generate points, would earn the least (or no) points. Those units, specifically, are (a) all of the 20 "senior units" (which would earn only .5 points each), (b) all the 19 "60% AMI units" (which would earn no points, since 60% AMI is equivalent to 84% SMI) and (c) a single 50% SMI unit (which would earn 1.5 points, since 50% AMI is less than 80% SMI but more than 60% SMI). The units that the Town deems to be the "additional units are, conveniently, the highest point-generating units: all of the 40% SMI units and all the remaining 80% SMI units.

There is no reasonable justification for manipulating this allocation of units simply to inflate the point total. The old units were demolished. Specific old units cannot be linked to specific new units. The allocation method should be neutral, not skewed simply to advantage the Town.

³ Only new units receiving a Certificate of Occupancy after July 1, 1990, or units newly subjected to affordability restrictions after that date, qualify for points. C.G.S. § 8-30g(1)(7).

⁴ The premise of the Town's methodology is that, when a post-1990 restricted unit replaces a pre-1990 restricted unit, the "replacement" unit is entitled to no points. We accept the Town's premise, but not its method for determining which units are deemed the "replacement" units and which ones are deemed point-generating "additional" units.

The only neutral, fair and reasonable method of allocating units in this situation – and the only method that is consistent with the intent of the statute to disallow points for units that replace pre-1990 restricted units – is to multiply the hypothetical point total for all 78 new units (94.5 points – see Schedule A attached) by the ratio of additional units to all units ($38 \div 78$, or 49%). The resulting neutral point total is 46.3. (See Sch. A).

The unreasonableness of the Town's approach is underscored by the fact that, even though about half of the newly-built units replaced pre-1990 restricted units, the 83 points claimed by the Town is only 10.5 points less than the points that would be generated by the project if, hypothetically, the old project had not existed.

The 83 points claimed by the Town, accordingly, over-states by 36.7 points the number of points to which it is actually entitled using a neutral and fair method of calculating points.


5. *Summary*

The adjustments required by the foregoing are summarized as follows:

Points claimed by the Town in Section B.1 Summary	220.25
Math error point overstatement (See Section 2 above)	(7)
Sasco Creek point overstatement (See Section 3 above)	(4.25)
Hales Court point overstatement (See Section 4 above)	<u>(36.7)</u>
<i>Adjusted Point Total</i>	172.3

The Application states that the Town requires 207.98 points to qualify for a Certificate of Affordable Housing Completion. In fact, it has no more than 172.3 points. Accordingly, it does not qualify.

Very truly yours,



David S. Hoopes

Hon. Evonne Klein
January 18, 2019
Page 5

cc: Laura Watson (Economic and Community Development Agent, Department of Housing,
505 Hudson Street, Hartford, CT 06106)
Annette Perry (via email: lolanicole@gmail.com)
Mary Young (via email: maryyoung@westportct.gov)
Nicholas Bamonte, Esq. (via email: nbamonte@berchemmoses.com)
Hon. James S. Marpe (First Selectman, Town of Westport, 110 Myrtle Avenue, Westport,
CT 06880)

SCHEDULE A

HALES COURT POINT CALCULATION ANALYSIS

1.	<i>Hypothetical point total of all 78 units¹</i>	
	19 60% AMI (84% SMI) units at 0	= 0 points
	20 senior units at .5	= 10 points
	13 50% AMI (80% SMI) units at 1.5	= 19.5 points
	26 25% AMI (40% SMI) units at 2.5	= <u>65 points</u>
	TOTAL	94.5 points
2.	<i>Multiplied by ratio of additional units to all units (38 ÷ 78)</i>	<u>.49</u>
3.	<i>Point total using neutral methodology</i>	46.3

¹ The source of the information provided is the last page of Section C.9 of the Application.



Timothy S. Hollister
Phone: (860) 251-5601
Fax: (860) 251-5318
thollister@goodwin.com

January 22, 2019

VIA PDF AND U.S. MAIL

The Hon. Michael Santoro
Acting Commissioner
Department of Housing
505 Hudson Street
Hartford, CT 06106

Re: Application of Town of Westport for Four-Year Moratorium From General Statutes § 8-30g Applications

Dear Acting Commissioner Santoro:

We represent Summit Saugatuck, LLC, a real property development and management company located in Southport, CT. At this time, Summit has pending before the Westport Planning and Zoning Commission a § 8-30g application, filed in November 2018, and therefore grandfathered from any moratorium that may be issued. Nonetheless, Westport's qualification, or failure to qualify, for Housing Unit Equivalent (HUE) points to achieve a four-year moratorium may arise as an issue at the upcoming Westport Planning and Zoning Commission hearings on Summit's application. Accordingly, we are writing to comment on one aspect of Westport's application: its claim of HUE points for the individual units in the Saugatuck Center, Bedford Square, Coastal Point, and Bradley Commons developments.. None of these developments qualifies as a "30 percent set-aside" development as defined in General Statutes § 8-30g(a)(1), yet Westport is claiming points for individual affordable units in each development. The Town claims points for Saugatuck Center (5 of 27 units, 18 percent set-aside); Bedford Square (5 of 26 units, 19 percent); Coastal Point (2 of 12 units, 16 percent); and Bradley Commons (4 of 20 units, 20 percent).

General Statutes § 8-30g(1), which governs points to be awarded toward a moratorium, makes it clear in four ways that units in a set-aside development may provide HUE points only if the development meets § 8-30g's minimum set aside percentage for affordable vs. market-rate

7324931

The Hon. Michael Santoro
January 22, 2019
Page 2

units. Since 2000, this requirement has been 15 percent of the units at 60 percent of the lesser of area / state median, and 15 percent at 80 percent at the lesser of area / state median.

The first governing provision is General Statutes § 8-30g(l)(4)(A), which states that points may be counted in "one or more affordable housing developments . . ." (emphasis added). Within § 8-30g, "affordable housing development" *is a defined term* and the definition is either assisted housing or set-aside housing. Set-aside housing is defined in § 8-30g(a)(6) as meeting the 30 percent minimum. There is no provision for points for individual units in a development in which units may meet § 8-30g's duration, household income, and maximum monthly payment requirements, but are not part of a minimum 30 percent set-aside (or are assisted housing).

Second, § 8-30g(l)(6)(A) provides one quarter (0.25) point for market-rate units *in a set-aside development*. This clearly implies that only developments that qualify as set-aside housing can generate points.

Third, it would be inconsistent with the wording and clear intent of the statute to conclude that HUE points can be generated by units that meet § 8-30g's duration, maximum household income, and maximum monthly payment rules, but not its minimum set-aside rules.

Finally, § 8-30g(l)(7)(B) allows points for certain "newly-restricted" units within a set-aside development.

Not counting individual units in a development that do not meet the set-aside requirement will have the benefit of encouraging towns to require developments to meet § 8-30g's set-aside requirements.

In summary, the total points claimed for Saugatuck Center, Bedford Square, Coastal Point, and Bradley Commons should not be allowed at this time as supporting a four-year moratorium.

Thank you for your attention.

Very truly yours,



Timothy S. Hollister

TSH:ekf

c: Summit Saugatuck, LLC



BERCHEM MOSES.COM

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Milford, CT 06460
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Rolan Joni Young
Ira W. Bloom
Jonathan D. Berchem □
Michelle C. Laubin ♦
Gregory S. Kimmel
Christopher M. Hodgson
Christine Owens Morgan
Mario F. Coppola
Meredith G. Diette
Ryan P. Driscoll ♦
Bryan L. LeClerc ♦
Brian A. Lema
Douglas E. LoMonte
Brian W. Smith
Christine A. Sullivan

Paula N. Anthony ♦
Alfred P. Bruno
Jacob P. Bryniczka
Eileen Lavigne Flug
Peter V. Gelderman ◊
Warren L. Holcomb •
Desi Imetovski
Eugene M. Kimmel

Nicholas R. Bamonte
Eric Barba •
Richard C. Buturla
Carolyn Mazanec Dugas
Matthew D. Glennon
Rebecca E. Goldberg
John Y. Khalil
Justin Stanko
Matthew L. Studer
Christopher J. Sugar

- - Also Admitted in CA
- ◊ - Also Admitted in IL
- - Also Admitted in MA
- - Also Admitted in NJ
- ♦ - Also Admitted in NY
- - Also Admitted in PA

PLEASE REPLY TO
WESTPORT OFFICE

Michael C. Santoro
Acting Commissioner
Department of Housing
505 Hudson Street
Hartford, CT 06106-7106

January 24, 2019

RE: Pending Application of the Town of Westport for a Certificate of Affordable
Housing Completion

Acting Commissioner Santoro,

This office represents the Town of Westport ("Town") in its pending Application for a Certificate of Affordable Housing Completion ("Application"). The Town submits this letter as public comment pursuant to C.G.S. § 8-30g(1)(4)(B), to address questions that have been raised by Attorney David S. Hoopes in his letter to Commissioner Evonne Klein dated January 18, 2019.

1. Total HUE Points Calculations

In its pending Application, the Town has claimed a total of 220.25 housing unit equivalent ("HUE") points. However, after further review and consultation with Town officials, we have determined that this total amount is inaccurate due to an inadvertent calculation error.

Specifically, the "Summary Calculation/HUE Points" spreadsheet, located at Section B.1. of the Application, attributes 10 points to project # 10, Hidden Brook. We have since verified that 6 points should be attributed to the Hidden Brook project. Please see the revised, corrected spreadsheet attached as Exhibit A.

Corrected for the initial miscalculation, the Application supports a total of 216.25 points. Under § 8-30g(1)(4)(A), the total points necessary for the Town to qualify for a certificate of affordable housing completion is 207.98 points. Therefore, the Application still supports enough points necessary for approval.

2. Sasco Creek

The Application attributes 24.25 points to project # 8, Sasco Creek, developed by the Westport Housing Authority (“WHA”). Please note that although the Summary Calculation/HUE Points spreadsheet correctly attributes 24.25 points to the project, we have discovered that the Documentation of Eligibility, located at Section C.8. of the Application, inaccurately attributes 21.25 points to the project.¹

The project was a redevelopment of 33 existing, pre-1990 affordable rental units, all of which were demolished and then rebuilt, along with 21 new affordable rental units. The Application attributes points to 10 of the replacement units and all 21 new units as follows:

10 rental units	@ 1 point per unit	10.00 points	
4 rental units	@ 2.5 points per unit	10.00 points	
17 rental units	@ 0.25 points per unit	+ 4.25 points	
			24.25 total points

The 10 units replaced existing units that had been restricted to 80%² of the state median income (“SMI”), but were newly restricted under the Affordability Plan to 40% SMI. As a result, the Application attributes 1 point per unit – the difference between 1.5 points per unit for rental units restricted to 80% median income pursuant to § 8-30g(1)(6)(B), and 2.5 points per unit for rental units restricted to 40% median income pursuant to § 8-30g(1)(6)(D).

The 4 new units were restricted to 40% SMI. As a result, the Application attributes 2.5 points per unit as rental units restricted to 40% median income pursuant to § 8-30g(1)(6)(D).

The 17 new units were restricted to 60% of the area median income (“AMI”), which exceeds 80% SMI.³ Under § 8-30g(a)(7), the Town must use SMI for purposes of HUE point calculation, and therefore, the 17 units do not qualify as “restricted” units pursuant to § 8-30g(1)(6). As a result, the Application attributes 0.25 points per unit as “unrestricted units in a set-aside development” pursuant to § 8-30g(1)(6)(A), and as “market rate units in a set-aside development” pursuant to Conn. Agencies Regs. § 8-30g-6(i).

We believe that it is contrary to the intent of § 8-30g to consider these 17 units as ineligible for 0.25 points per unit. Although these units do not qualify as “restricted” for purposes of point

¹ The original Documentation of Eligibility inaccurately represented that 12 units generated 1 point per unit, instead of 10 units, and that 2 units generated 2.5 points per unit, instead of 4 units.

² The existing units had been initially constructed by WHA pursuant to C.G.S. 8-69, with maximum income restrictions of 80% SMI pursuant to § 8-72a.

³ See “HUD Income Limits Tables” located at Section B.4. of the Application.

calculation, in reality, these units are limited to those families with incomes at or below 60% AMI. Further, the affordability period for these units is 50 years, 10 year greater than the period required under § 8-30g. To consider such units as ineligible for points, but units lacking any restriction as eligible for points, would interpret § 8-30g in a way that deters, instead of encourages, the development of affordable housing.

In addition, please see correspondence supporting these calculations from Redniss & Mead, consultants for WHA on the project, attached as Exhibit B.

3. Hales Court

The Application attributes 83 points to project # 9, Hale's Court, also developed by the WHA. The project was a redevelopment of 40 existing, pre-1990 affordable rental units, all of which were demolished and rebuilt, along with 38 new affordable rental units.

The Affordability Plan restricted the 78 total units for a period of 99 years as follows:

19 units restricted to 60% AMI
33 units restricted to 80% SMI⁴
26 units restricted to 40% SMI

All 19 of the units restricted to 60% AMI and 21 of the 33 units restricted to 80% SMI were considered as replacement units for the 40 pre-existing units. While it is true that these units would generate less points compared to the 38 new units claimed for points in the Application, we do not believe that § 8-30g precludes the Town from utilizing these units as replacements.

The Application attributes points to the remaining 38 new units as follows:

12 rental units	@ 1.5 point per unit	18.00 points	
26 rental units	@ 2.5 points per unit	+ <u>65.00 points</u>	
			83.00 total points

For the 12 new units, the Application attributes 1.5 points per unit as rental units restricted to 80% median income pursuant to § 8-30g(1)(6)(B). For the 26 new units, the Application attributes 2.5 points per unit as rental units restricted to 40% median income pursuant to § 8-30g(1)(6)(D).

⁴ Under the Affordability Plan, 3/4 of the total units, or 59 units, must have been restricted to at least 80% SMI. This requirement was satisfied by the 33 units restricted to 80% SMI, plus the 26 units restricted to 40% SMI.

These calculations, along with the determination of which units constitute replacement units for the 40 pre-existing units, were based in part on representations by WHA at the time of the local zoning proceedings that the Department of Housing had endorsed such a points allocation, subject to final Department review. For additional information, please see correspondence from Redniss & Mead, consultants for WHA on the project, attached as Exhibit B.

In conclusion, even accounting for the mathematical error related to project # 10, Hidden Brook, the Application still supports 216.25 HUE points, an amount sufficient for approval of a certificate of affordable housing completion. For many years, Westport has worked diligently to fulfill the obligations under § 8-30g and expand its affordable housing stock, and now looks forward to your favorable review.

Should you or any members of your Department have any questions or concerns, please contact us directly at (203) 227-9545. Thank you for your consideration.

Very truly yours,



Ira W. Bloom, Esq.

Nicholas R. Bamonte, Esq.

Enclosures

cc: David Hoopes, Esq. (via email: dhoopes@hmrslaw.com)

**Summary of Unit Count and Housing Unit Equivalency Points
Application for Certificate of Affordable Housing Completion
Town of Westport, Connecticut**

EXHIBIT A

PROJECT NAME	PROJECT ADDRESS	AFFORDABLE UNIT LOCATIONS (if mixed with market rate units)	C/O ISSUED	TOTAL UNITS	AFFORD. UNITS	POINTS / UNIT	TOTAL POINTS	EXPLANATION OF POINTS
1 Rotary Centennial House	10 West End Avenue	All Affordable Units	8/26/2009	6	6	1.5	9	Units (rentals) count toward moratorium because constructed after 1990 and are deed restricted. Units will be rental at income below 50% area median=80% state median.
2 Bradley Commons	19 Indian Hill Road/3 Bradley Lane/86 Saugatuck Avenue	Bldg. 300, Units 301, 302, 303, 304	8/18/2009	20	4	1	4	Units (condos) count toward moratorium because constructed after 1990 and are deed restricted. Units will be sold to families whose income does not exceed 80% of state median income.
3 Saugatuck Center (aka Gault site)	575 Riverside Ave & 580 Riverside Avenue	Bldg. 300, Units 301, 302, 303, 304 575 Riverside: Bldg F (aka Bldg 2), Apt F3 (aka Apt. 203) 580 Riverside: Bldg A, Apt. A2 (aka Apt. 204) Bldg B, Apt. B1 (aka Apt. 103) Bldg C, Apt. C3 (aka Apt. 503) Bldg E, Apt. E6 (Apt. 406)	7/20/11 & 9/24/13 (2-phased project with 575 Riverside approved in 1st phase and 1 Ketchum and 580 Riverside approved in 2nd phase)	27	5	1.5	7.5	Units (rentals) count toward moratorium because constructed after 1990 and are deed restricted. Units will be rented to families whose income does not exceed 80% of state median income.
4 Bedford Square	59 Post Road East	Units 303, 305, 215, 405, and 412	3/17/2017	26	5	1.5	7.5	Units (rentals) count toward moratorium because constructed after 1990 and are deed restricted. Units will be rented to families whose income does not exceed 80% of state median income.
5 20 Cross Street	20 Cross Street	Units 1, 4, and 8	4/22/2003	10	3	1	3	Units (condos) count toward moratorium because constructed after 1990 and are deed restricted and part of set-aside development. Units are sold to families whose income does not exceed 80% of the state median income.
6 Coastal Point	1135 Post Road East	Units 103 and 402	4/19/17 & 5/22/17 (2-phased project with Unit 402 CO'd in 1st phase and Unit 103 CO'd in 2nd phase)	12	2	1.5	3	Units (rentals) count toward moratorium because constructed after 1990 and are deed restricted. Units will be rented to families whose income does not exceed 80% of state median income.
7 1177 Greens Farms East	1177 Post Road East	Units 102, 103, 110, 111, 114, 117, 120, 121, 127, 130, 132, 133, 136, 202, 203, 208, 209, 217, 221, 223, 229, 234, 236, 303, 308, 309, 402, 403, 410	11/8/2018	94	15	2	30	Units (rentals) count toward moratorium because constructed after 1990 and are deed restricted. Units will be rented to families whose income does not exceed 60% of state median income.
					14	1.5	21	Units (rentals) count toward moratorium because constructed after 1990 and are deed restricted. Units will be rented to families whose income does not exceed 80% of state median income.
					65	0.25	16.25	New units (rentals) count toward moratorium because market rate units are part of set-aside development.

**Summary of Unit Count and Housing Unit Equivalency Points
Application for Certificate of Affordable Housing Completion**

Town of Westport, Connecticut

PROJECT NAME	PROJECT ADDRESS	AFFORDABLE UNIT LOCATIONS (if mixed with market rate units)	CO ISSUED	TOTAL UNITS	AFFORD UNITS	POINTS / UNIT	TOTAL POINTS	EXPLANATION OF POINTS	
Sasco Creek	1655 Post Road East	All affordable (54 units in 14 bldgs)	Bldg 1: 10/27/15 Bldg 2: 10/2/15 Bldg 3: 9/29/15 Bldg 4: 5/14/15 Bldg 5: 5/27/15 Bldg 6: 5/27/15 Bldg 7: 5/14/15 Bldg 8: 3/19/15 Bldg 9: 3/19/15 Bldg 10: 4/3/15 Bldg 11: 4/17/15 Bldg 12: 11/25/15 Bldg 13: 11/20/15 Bldg 14: 2/15/15	31 of 54 units earn points - remainder are replacements	10	1	10	Existing units (rentals) are deed restricted but do not count toward moratorium because original units were constructed prior to 1990; however, income will be reduced from 80% SMI to 40% so get 1 point each.	
				17	2.5	10	New units (rentals) are deed restricted to incomes 40% state median income or less.		
Hale's Court	1-79 Hales Court	All affordable (78 units in 78 bldgs)	See narrative for CO date for each of the 78 bldgs.	38 of 78 units earn points - remainder are replacements	26	2.5	65	Units (rentals) will be rented to families whose income does not exceed 40% of the state median income.	
Hidden Brook	1655 Post Road East	All affordable (39 units in 11 bldgs)	12/21/1999	4 of 39 units earn points - remainder are replacements	12	1.5	18	Units (rentals) will be rented to families whose income does not exceed 80% of the state median income.	
				4	1.5	6	New units (rentals) are deed restricted to incomes 40% state median income or less.		
Total Constructed and CO'd								216.25	Westport needs 207.98 points since there are 10,399 dwelling units and 2% = 207.98

January 24, 2019

Nicholas R. Bamonte, Esq.
Berchem Moses PC
1221 Post Road East
Westport, CT 06880
(via email: nbamonte@berchemmoses.com)

RE: Town of Westport – Application for Certificate of Affordable Housing Completion

Dear Mr. Bamonte,

I received a copy of the letter to Hon. Evonne Klein (Commissioner, CT Dept. of Housing) from Attorney David S. Hoopes (Rausch & Scaramozza) dated January 18, 2019. In it, Mr. Hoopes raises several issues with the methodology and calculation of Moratoria points in the Town's Application for a Certificate of Affordable Housing Completion. While I am not in a position to comment on the "math error" referenced in his letter (as that likely relates to some correctable discrepancy in the Town's filing materials), I can add some insight and clarification regarding the specific calculation of points for both the Sasco Creek and Hales Court developments.

As you know, Redniss & Mead, and myself in particular, spent a significant amount of time with the Town of Westport, including coordination with the State of CT, in drafting and processing the zoning applications to facilitate these developments. I was also on the Governor's task force that helped establish the moratoria point system and can comment on the intent of the 8-30g point system.

Sasco Creek

The "60% area median income" units were categorized in the original zoning applications as "Market" and further noted as follows: "Units to be restricted to 60% AMI, which exceeds 80% of SMI and are therefore "Market" rate." It defies logic to assert that such units should generate no points due to their 60% AMI restriction, but could generate the calculated 0.25 points per unit if they were more expensive and without any income limitations at all. That would clearly be contrary to the goals and intent of the point system.

Hales Court

There is no explicit methodology in 8-30g for how replacement units need to be allocated in a redevelopment. There is also no policy stating that a development should not earn the maximum points possible. The allocation of units/points in the original zoning applications acknowledges that the State will ultimately determine the point valuation. See enclosed chart titled "Hales Court – Moratorium Points Calculation: All Rental" dated 4/1/2009.

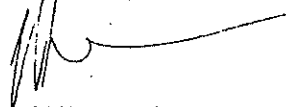
All that being said, the proposed allocation of units was not without rationale, merit, or consultation with staff of the State Office of Housing Finance and Development. Please see enclosed email from Michael Santoro dated April 3, 2009.

The proposal included the teardown and rebuild of 40 units of substandard affordable housing to be replaced with brand new homes with enhanced supportive services. That effort should be applauded and encouraged, yet it receives no recognition, no incentive, no points under Section 8-30g. The previously existing Hales Court units included significant occupancy by seniors, which would theoretically be worth fewer moratoria points if they were to count as new. The proposed redevelopment also included 19 units at 60% AMI. That effort has value and furthers the goals of affordable housing, yet it receives no additional incentive or points under 8-30g than if they were fully market rate.

The redevelopment produced a total of 78 newly built affordable homes with supportive services, only a fraction of which receive recognition under 8-30g. It is in that context, looking at the redevelopment effort as a whole, that the proposed point allocation is fair and appropriate.

I hope this helps support the proposed point calculations in your pending application. Please feel free to contact me if I may be of further assistance.

Sincerely,



Richard W. Redniss, AICP

Enclosures

cc: Carol Martin, WHA (via email: cmartin14@snet.net)

REDNISS
& MEAD

4/1/2009

(Draft for Discussion)

HALES COURT

Moratorium Points Calculation: All Rental

Existing MHZ Text	Points/Unit	Total Points
40 Replacement Units @ 80% SMI	0	0
38 New Units @ 80% SMI	1.5	57
Total		57

Proposed MHZ Text	Points/Unit	Total Points	Notes
20 Senior Units	0	0	40 Replacement Units
19 Units @ 60% AMI	0	0	
1 Unit @ 50% AMI	0	0	
26 Units @ 25% AMI (<40% SMI)	2.5	65	38 New Units
12 Units @ 50% AMI (<80% SMI)	1.5	18	
Total		83	

AMI/SMI Equivalency Chart - 2008		
Moratorium Points	SMI	AMI
2.5	40% (\$30,750)	25% (\$29,450)
1.5	80% (\$61,500)	50% (\$58,900)
0.5	Seniors	Seniors
0.25	> 80%	60% (\$70,680)

Notes

- Existing 40 units to be replaced receive no moratorium points
- Of the 78 new and redeveloped units, 40 of the lowest point generating units (i.e. Senior and 60% AMI units) may be able to be designated as "existing", per discussions with Michael Santoro (Community Development Specialist, Office of Housing Finance and Development).
- Actual point values to be confirmed by DECD when units are placed in service.
- This 'static' chart is for discussion purposes only. Occupancy of units is subject to change over time.

Ray Mazzeo

From: Richard W. Redniss
Sent: Friday, April 10, 2009 1:47 PM
To: Ray Mazzeo
Subject: FW: Hales Court Question

Richard W. Redniss
Redniss&Mead

From: Santoro, Michael C [mailto:Michael.Santoro@ct.gov]
Sent: Friday, April 03, 2009 4:18 PM
To: Richard W. Redniss
Subject: Hales Court Question

Richard:

As I believe we have discussed in the past, a moratorium is not determined based solely on the number of points that a community would receive based on produced units during the appropriate time frame. Further, there is considerable backup documentation and certifications that would be included in a request for a moratorium

This being said, if the information you characterized on the phone and in your email were to be true and accurate, then it would appear that your calculation of points would also be true and accurate. To be specific, the current units are "moderate rental family units" and any redevelopment would by nature continue to constitute those units in the same way. As I understand the proposed redevelopment, 38 of the newly constructed units would be "service enhanced", which are not part of the current project. Clearly, it would be reasonable to use these new units toward the point count.

If you need any additional information, please do not hesitate to contact me.

Michael C. Santoro
Community Development Specialist
Office of Housing Finance and Development



Ned Lamont
Governor

STATE OF CONNECTICUT
DEPARTMENT OF HOUSING



Michael C. Santoro
Acting Commissioner

February 14, 2019

Anika Singh Lemar
Clinical Associate Professor of Law
Yale Law School
P.O. Box 209090
New Haven, CT 06520

Re: Response to letter dated January 2, 2019 in regard to Westport's Notice of Intent to Apply for State Certificate of Affordable Housing Completion

Dear Ms. Lemar:

The Department of Housing ("DOH") received your letter dated January 2, 2019 setting forth your concerns related to the Town of Westport's Notice of Intent to Apply for State Certificate of Affordable Housing Completion (the "Moratorium Notice"). DOH has reviewed your letter, the applicable state regulations, and considered the arguments set forth in your letter, namely that "Westport's failure to notify its residents of their opportunity to request a public hearing . . . that is required by 8-30g-6(j)(1). . . makes the Moratorium Notice defective".

The Department's position is that the applicable regulatory provision does not require a municipality to publish a specific statement in the public notice informing residents of the municipality of their right to request a public hearing upon satisfaction of the petition requirement. The language of the 8-30g-6(j)(1) of the Regulations of Connecticut State Agencies ("RCSA") states, in part, that "A municipality . . . shall publish. . . a **notice of its intent to apply and the availability of its proposed application for public inspection and comment.** Such notice **shall state the location where the proposed application, including all supporting documentation, shall be available for inspection and comment, and to whom written comments may be submitted.**" (Emphasis added). Nowhere in the language of the cited regulation is the municipality required to publish notice of the petition provision. Had DOH intended a reference to the petition to be a required part of such published notice, DOH would have added the appropriate language to RCSA 8-30g-6, thereby requiring the inclusion of such language in the notice.

The Affordable Housing Land Use Appeals Procedures Regulations (RCSA 8-30g-1 through 8-30g-8) were the result of a multi-year process with input from multiple interested persons and parties. Additionally, they were ultimately approved only after extensive review and comment by both the Legislative Commissioners Office and the Regulation Review Committee.

Therefore, it is DOH's position that Westport's Moratorium Notice was not defective. Please do not hesitate to contact me if you have any questions. Thank you for your comments.

Sincerely,

Michael Santoro
Acting Commissioner





Dannel P. Malloy
Governor

STATE OF CONNECTICUT
DEPARTMENT OF HOUSING



Evonne M. Klein
Commissioner

February 25, 2019

Mr. James S. Marpe
First Selectman
Town of Westport
110 Myrtle Avenue
Westport, Connecticut 06880

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

Dear First Selectman Marpe:

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 December 12, 2018 request from the Town of Westport (the "Town") 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 on the Town's application. Comments were received from the Yale Law School; Redniss & Mead; Berchem Moses; Hoopes Margenthaler Rausch & Scaramozza; and Shipman & Goodwin during this period.

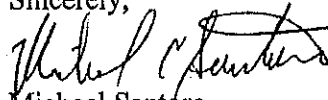
DOH staff has reviewed the materials received, and has determined that the Town does meet the requirements for receipt of a Certificate of Affordable Housing Project Completion as submitted.

Please see the attached memorandum detailing a description of the methodology used to calculate the housing unit equivalent (HUE) points.

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 Westport 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 for continuing to address the affordable housing needs in your community. Should you or your staff have any questions with regard to this decision, please do not hesitate to contact Laura Watson at (860) 270-8169, or by email at Laura.Watson@ct.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Santoro", with a long horizontal line extending to the right from the end of the signature.

Michael Santoro
Acting Commissioner



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: February 25, 2019

RE: Westport Moratorium Application: Calculation of HUE points for the December 12, 2018 Application

Calculation of Housing Unit Equivalent (HUE) Points

Restriction:

25% AMI= \$134,900 AMI
X 0.25
\$33,725

50% AMI= \$134,900 AMI
X 0.50
\$ 67,450

60% AMI= \$134,900 AMI
X 0.600
\$ 80,940

80% AMI= \$134,900 AMI
X 0.80
\$107,920

HUE's

80% SMI	80% of \$96,300 = \$77,040
60% SMI	60% of \$96,300 = \$57,780
40% SMI	40% of \$96,300 = \$38,520

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.

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 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 section 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 takes effect 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.

Rotary Centennial House

Our review indicates that the 6 affordable family rental units in the supportive housing development are restricted to < 50% AMI (4 one bedroom units and 2 two bedroom units – as indicated in the Declaration and Agreement of Restrictive Covenants recorded on 7/23/2008) and were built after July 6, 1995, which makes them subject to the “lesser of test.” SMI is lower than AMI, so AMI was converted to SMI in order to determine unit eligibility. This project has a CHFA mortgage and is also a Supportive Housing project of DOH. It has a 40 year mortgage and term of affordability.

AMI	SMI	Units
<50%AMI (\$67,450)	80% SMI (\$77,040)	6
Total		6

6 family rental units @ 80% SMI = HUE @80% SMI = 1.5 points each
 6 units @ 1.5 points = **9 points**

Bradley Commons

Our review indicates that this project is not a Set-aside Development and the 4 affordable family owner occupied units (out of 20 units) were built after July 6, 1995, which makes them subject to the “lesser of test.” As indicated in the Bradley Commons Affordability Plan, recorded on June 15, 2018, the units will be offered to individuals or families whose incomes are less than or equal to 80% SMI.

4 family owner occupied units @ 80% SMI = HUE @80% SMI = 1 point each
 4 units @ 1 point = **4 points**

Saugatuck Center

Our review indicates that this project is not a Set-aside Development and that the 5 affordable family rental units (out of 27 units) were built after July 6, 1995, which makes them subject to the “lesser of test.” As indicated in the Affordability Plan for Hamilton Development, 575 and 580 Riverside Avenue and 9 Ketchum Street, Westport, Connecticut, dated March 2001, and deed restricted and recorded on 4/11/2011, the units will be offered to individuals or families whose incomes are less than or equal to 80% SMI.

5 family rental units @ 80% SMI = HUE @80% SMI = 1.5 points each
 5 units @ 1.5 points = **7.5 points**

Bedford Square

Our review indicates that this development is not a Set-aside Development and the 5 affordable family rental units (out of 26 units) were built after July 6, 1995, which makes them subject to the "lesser of test." As indicated in the Affordability Plan for Bedford Square, Westport, Connecticut, dated January 26, 2015, and recorded in book 3583 page 148-183 File #3628, the units will be offered to individuals or families whose incomes are less than or equal to 80% SMI.

5 family rental units @ 80% SMI = HUE @80% SMI = 1.5 points each
5 units @ 1.5 points = **7.5 points**

20 Cross Street

Our review indicates that as per Public Act 95-280, the 20 Cross Street project is considered to be an "Affordable Housing Development" or "Set-aside Development" in which 25% of the dwelling units will be deed restricted to require dwellings to be sold or rented to persons or families at or below 80% of the median income (lesser of test applies), for at least thirty years. Further, because the application for 20 Cross Street was filed in 1998, the Set-aside Development (which adheres to Public Act 95-280 which addresses applications received on or after July 6, 1995) shall be awarded .25 points per each market rate unit (as indicated in Public Act 00-206).

Our review indicates that 3 affordable family rental units (out of 10 units) were built after July 6, 1995, which makes them subject to the "lesser of test." As indicated in the Affordability Plan for 20 Cross Street, Westport, CT, recorded on August 6, 2002, in Book 2028, Page 185, File #1279, the units will be offered to individuals or families whose incomes are less than or equal to 80% SMI for a period of thirty years.

3 family owner occupied units @ 80% of SMI = HUE @ 80% SMI = 1.5 points each
3 units @ 1 point = **3 points**

7 market rate set aside units = HUE @ .25 each
7 units @ .25 points = **1.75 points**

3 points + 1.75 points = 4.75 points

Coastal Point

Our review indicates that this project is not a Set-aside Development and that the 2 affordable family rental units (out of 12 units) were built after July 6, 1995, which makes them subject to the "lesser of test." As indicated in the Affordability Plan for 1135 Post Road East, Westport, Connecticut, dated April, 21, 2015, recorded on April 29, 2016, Book 3693, Page 152-171, File 5355, (Amendment of the Affordability Plan for 1135 Post Road East, record 3/21/2017, Book 3772, Page253, File 4615) the units will be offered to individuals or families whose incomes are less than or equal to 80% SMI for 40 years.

2 family owner rental units @ 80% SMI = HUE @80% SMI = 1.5 point each
2 units @ 1.5 points = **3 points**

1177 Greens Farms

Our review indicates that this development was built after July 6, 1995, which makes it subject to the "lesser of test." As indicated in the 1177 Post Road East, Westport, Connecticut, Housing Affordability Plan for Household Income and Rental Price Restrictions for Workforce Homes, Mixed Income Units, dated June 21, 2017, recorded on June 22, 2017, Book 3793, Page 97, File 6054, states, "Under this plan, thirty percent (30%) of the residential rental units will meet the criteria for "affordable housing" as defined in Connecticut General Statutes ("C.G.S.") 8-30g. C.G.S. 8-30g requires that fifteen percent (15%) of the residential rental units be affordable for 40 years to families earning eighty percent (80%) or less of the area or State median income, whichever is less, and that fifteen percent (15%) be affordable to families earning sixty percent (60%) or less of the area or State median income, whichever is less."

This project adheres to Public Act 00-206 (As of June 1, 2000) which states "Set-aside Development" means a development in which not less than 30 percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least 40 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.

15 family rental units @ 60% of SMI = HUE @ 60% SMI = 2 points each
15 units @ 2 points = **30 points**

14 family rental units @ 80% of SMI = HUE @ 80% SMI = 1.5 points each
14 units @ 1.5 points = **21 points**

65 market rate set aside units = HUE @ .25 each
65 units @ .25 points = **16.25 points**

30 points + 21 points + 16.25 points = 67.25 points

Sasco Creek

The Statute 8-30g Affordable Land Use Appeals Procedure, effective July 14, 2017 to September 30, 2022, in regard to the replacement of 35 affordable units for life, as per 8-30 g (l)(8) "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." Subsection (6) reads "For the purposes of this subsection, housing unit-equivalent points shall be determined by the commissioner as

follows: (B) Family units restricted to persons and families whose income is equal to or less than eighty percent of the median income shall be awarded one point if an ownership unit and one and one-half points if a rental unit.....”

Therefore, moving forward with this project, Demolition HUE Points (35 units @ 1.5 HUE points = 52.5 HUE points) will be subtracted from the “new” 54 unit development that exists today.

“New” Development HUE Points – Demolition HUE Points = Total HUE Points

Demolition HUE Points (8-30g (1)(8) CGS)

35 “old” family rental units @ 80 % of median income = HUE @ 80 % SMI = 1.5 HUE points each
 35 “old” rental units @ 1.5 points = **52.5 Demolition HUE Points**

“New” Development HUE Points (8-30g (1)(7) CGS)

The “new” 54 unit Sasco Creek development that exists today consists of the following (this includes the 4 units that are actually part of Sasco Creek but are physically located on the Hidden Brook property):

AMI	SMI	UNITS
0-25% AMI(\$33,725)	40% SMI (\$35,520)	12
>25% - 50% AMI(\$67,450)	80% SMI (\$77,040)	29
>50% - 60% AMI(\$80,940)	80% SMI (\$77,040)	13 (because 60% AMI is over 80% SMI these are considered market rate, but not eligible for points bc not a Set-aside Development)
Total		54

This project does not adhere to Public Act Public Act 00-206 (As of June 1, 2000) which states “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 fifteen 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 median income 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 median income. This project as per the Declaration and Agreement of Restriction Covenant dated 8/29/2014 states there is a 15 year restriction plus an additional 15 years after the close of the compliance period, which would total 30 years.

Our review also indicates that the "new" 54 unit Sasco Creek Development was built after July 6, 1995, which makes it subject to the "lesser of test." SMI is lower in this instance so AMI was converted to SMI in order to determine unit eligibility.

12 family rental units @ 40% of SMI = HUE @ 40% SMI = 2.5 points each
12 units @ 2.5 points = **30 points**

29 family rental units @ 80% of SMI = HUE @ 80% SMI = 1.5 points each
29 units @ 1.5 points = **43.5 points**

30 points + 43.5 points = "New" Development HUE 73.5 Points

Therefore:

"New" Development HUE Points – Demolition HUE Points = Total HUE Points

73.5 points – 52.5 Points = 21 Total HUE Points

Hale's Court

The Statute 8-30g Affordable Land Use Appeals Procedure, effective July 14, 2017 to September 30, 2022, in regard to the replacement of 40 affordable units, as per 8-30 g (1)(8) "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." Subsection (6) reads "For the purposes of this subsection, housing unit-equivalent points shall be determined by the commissioner as follows: (B) Family units restricted to persons and families whose income is equal to or less than eighty percent of the median income shall be awarded one point if an ownership unit and one and one-half points if a rental unit....."

Therefore, moving forward with this project Demolition HUE Points (40 units @ 1.5 HUE points = 60 HUE points) will be subtracted from the "new" 78 unit affordable housing development that exists today.

"New" Development HUE Points - Demolition HUE Points = Total HUE Points

Demolition HUE Points (8-30g (1)(8) CGS)

40 "old" family rental units @ 80 % of median income = HUE @ 80% SMI = 1.5 HUE points each
40 "old" rental units @ 1.5 points = **60 Demolition HUE Points**

"New" Development HUE Points (8-30g (1)(7) CGS)

The "new" 78 Affordable Housing Unit Hales Court development that exists today consists of the following:

78 total Units:

- 20 Elderly (1 Bedroom)
- 10 Supportive (Disabled)
- 48 Family

Breakdown as per CHFA Declaration and Agreement of Restrictive Covenants dated March 2, 2010, 2 (f) of this declaration indicates of the 78 qualified units, 20 shall be targeted to individuals age 62 and older and 10 shall be reserved for supportive housing):

AMI	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom	Totals
MAX 25%AMI	6	20	7	0	33
>25% to 50% AMI	2	7	6	2	17
>50% to 60% AMI	10	2	4	2	18
TOTALS	18	29	17	4	68

SUPPORTIVE HOUSING AFFORDABLE UNITS					
AMI	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom	Totals
MAX 50% AMI	8	2	0	0	10
ALL UNITS TOTALS	26	31	17	4	78

Breakdown housing type/points utilizing CHFA Declaration and Agreement of Restrictive Covenants dated March 2, 2010:

Elderly		
80% SMI (77,040)	8 units	8 units @ .5 pts = 4 pts
>80% SMI	12 units	12 units @ 0 pts = 0 pts
Total Elderly Points		4 points
Supportive		
80% SMI (77,040)	10 units	10 units @ 1.5 pts = 12.5 pts
Total Supportive Points		15 points
Family		
80% SMI (77,040)	15 units	15 units @ 1.5 pts = 22.5 pts
60% SMI (57,780)	0 units	0 units @ 2 pts = 0 pts
40% SMI (38,520)	27 units	27 units @ 2.5 pts = 67.5 pts
>80% SMI	6 units	6 units @ 0 pts = 0 pts
Total Family Points		90 points
TOTAL "NEW" POINTS		109 POINTS

AMI	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom	Totals
ELDERLY					
MAX 25% AMI	6				
>25% to 50% AMI	2				
>50% to 60% AMI	10	2			
TOTAL	18	2			20
SUPPORTIVE					
MAX 50% AMI	8	2			
TOTAL	8	2			10
FAMILY					
MAX 25% AMI	0	20	7	0	27
>25% to 50% AMI	0	7	6	2	15
>50% to 60% AMI	0	0	4	2	6
TOTAL	0	27	17	4	48
GRAND TOTAL UNITS					
					78
Extra points for Affordable elderly (calculated at end)					8
Extra points for Affordable three bedroom units (calculated at end)					15

This project does not adhere to Public Act 00-206 because it is only a 30 year deed restriction.

Our review indicates that the "new" 78 unit Halés Court Development was built after July 6, 1995, which makes it subject to the "lesser of test." SMI is lower in this instance so AMI was converted to SMI in order to determine unit eligibility.

8 elderly units @ 80% of SMI = HUE @ 80% SMI = .5 points each
8 units @ .5 points = **4 points**

10 supportive rental units @ 80% of SMI = HUE @ 80% SMI = 1.5 points each
10 units @ 1.5 points = **15 points**

15 family rental units @ 80% of SMI = HUE @ 80% SMI = 1.5 points each
15 units @ 1.5 points = **22.5 points**

27 family rental units @ 40% of SMI = HUE @ 40% SMI = 2.5 points each
27 units @ 2.5 points = **67.5 points**

4 points + 15 points + 22.5 points + 67.5 points = 109 "New" Development HUE Points

Therefore:

"New" Development HUE Points – Demolition HUE Points = Total HUE Points

109 points – 60 points = 49 Total HUE Points

Hidden Brook

The Statute 8-30g Affordable Land Use Appeals Procedure, effective July 14, 2017 to September 30, 2022, in regard to the replacement of 19 affordable units (according to the records of the Department, 19 units were demolished in order to make way for the development of Hidden Brook), as per 8-30 g (1)(8) "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." Subsection (6) reads "For the purposes of this subsection, housing unit-equivalent points shall be determined by the commissioner as follows: (B) Family units restricted to persons and families whose income is equal to or less than eighty percent of the median income shall be awarded one point if an ownership unit and one and one-half points if a rental unit....."

Therefore, moving forward with this project Demolition HUE Points (19 units @ 1.5 HUE points = 28.5 HUE points) will be subtracted from the "new" 39 unit affordable housing development that exists today.

"New" Development HUE Points - Demolition HUE Points = Total HUE Points

Demolition HUE Points (8-30g (1)(8) CGS)

19 "old" family rental units @ 80 % of median income = HUE @ 80% SMI = 1.5 HUE points each

19 "old" rental units @ 1.5 points = **28.5 Demolition HUE Points**

"New" Development HUE Points (8-30g (1)(7) CGS)

The "new" 39 unit Hidden Brook development that exists today consists of the following (this does not include the 4 units that are actually part of Sasco Creek but are physically located on the Hidden Brook property):

AMI	SMI	Units
<50%AMI (\$67,450)	80% SMI (\$77,040)	39
Total		39

Our review indicates that the 39 affordable family rental units for Hidden Brook were built after July 6, 1995, which makes them subject to the "lesser of test." SMI is lower in this instance so AMI was converted to SMI in order to determine unit eligibility. The HOME Restrictive Land Use Covenant dated March 25, 1999 indicates that 39 units are restricted to <50% AMI for a period of 99 years.

39 family rental units @ 80% SMI = HUE @80% SMI = 1.5 points each
39 units @ 1.5 points = 58.5 "New" Development HUE Points

Therefore:

"New" Development HUE Points – Demolition HUE Points = Total HUE Points

58.5 points – 28.5 Points = 30 Total HUE Points

Bonus Housing Unit – Equivalent Points for Westport Application

- **Family Units, owned or rented containing three or more bedrooms (.25 per unit) –**
 - **Hales Court:** Breakdown as per CHFA Declaration and Agreement of Restrictive Covenants dated March 2, 2010 indicates that there are 15 units containing 3 or 4 bedrooms.

15 (3 and 4 bedroom) units @ 80% of SMI = HUE @ 80% SMI = .25 points each
15 units @ .25 points = 3.75 points
- **Family Units within an approved Incentive Housing Development (.25 per unit) – Incentive zoning regulations were not indicated in the application (as per 8-13X)**
- **If at least 60% of the Total Affordable Units above are Family Units, then each Elderly Unit receives .5 per unit – No elderly units were indicated.**
 - **Hales Court:** Breakdown as per CHFA Declaration and Agreement of Restrictive Covenants dated March 2, 2010 indicates that there are 8 elderly units

8 elderly units @ 80% of SMI = HUE @ 80% SMI = .5 points each
8 units @ .5 points = 4 points

The total HUE Calculation for Westport is 210.75

9 + 4 + 7.5 + 7.5 + 4.75 + 3 + 67.25 + 21 + 49 + 30 + 3.75 + 4 = 210.75

Westport needs at least 207.98 HUES (2% * 10,399 = 207.98 points to be eligible), therefore Westport is eligible based on HUE's.

Hollister, Timothy

From: Watson, Laura <Laura.Watson@ct.gov>
Sent: Wednesday, March 6, 2019 3:10 PM
To: Hollister, Timothy
Cc: Santoro, Michael C
Subject: RE: Westport
Attachments: bercham moses.pdf

Laura Watson, AICP

From: Hollister, Timothy [mailto:THollister@goodwin.com]
Sent: Wednesday, March 06, 2019 3:05 PM
To: Watson, Laura <Laura.Watson@ct.gov>
Cc: Santoro, Michael C <Michael.Santoro@ct.gov>
Subject: RE: Westport

Hi, sorry to be a pest. We have seen DOH's reply to Anika about the notice issue. What I am asking for is a copy of a letter which would have been on either Town of Westport or Berchem and Moses stationery responding to the long letter that Attorney Lemar submitted to Michael in January. Thanks

From: Watson, Laura <Laura.Watson@ct.gov>
Sent: Wednesday, March 6, 2019 3:02 PM
To: Hollister, Timothy <THollister@goodwin.com>
Cc: Santoro, Michael C <Michael.Santoro@ct.gov>
Subject: RE: Westport

Laura Watson, AICP

From: Hollister, Timothy [mailto:THollister@goodwin.com]
Sent: Wednesday, March 06, 2019 2:59 PM
To: Watson, Laura <Laura.Watson@ct.gov>
Cc: Santoro, Michael C <Michael.Santoro@ct.gov>
Subject: RE: Westport

Hi Mary Young in Westport says the Town sent a response to DOH to the early January 2019 letter from Yale Law School - that is what I am looking for, thanks

From: Watson, Laura <Laura.Watson@ct.gov>
Sent: Wednesday, March 6, 2019 2:40 PM
To: Hollister, Timothy <THollister@goodwin.com>
Cc: Santoro, Michael C <Michael.Santoro@ct.gov>
Subject: Westport

Hi Tim,

Hollister, Timothy

From: Watson, Laura <Laura.Watson@ct.gov>
Sent: Wednesday, March 6, 2019 2:40 PM
To: Hollister, Timothy
Cc: Santoro, Michael C
Subject: Westport
Attachments: rednis and mead_.pdf

Hi Tim,

I think this is what you are looking for.

Laura Watson, AICP

Economic and Community Development Agent
Department of Housing
505 Hudson Street
Hartford, CT 06106

Phone: 860-270-8169

Fax: 860-706-5741