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July 10, 2019

Via Hand Delivery

Attorney Amy Filotto  
Connecticut Department of Housing  
505 Hudson Street  
Hartford, CT 06105

Re: Petition for Declaratory Ruling Pursuant to Connecticut General Statutes  
Section § 4-176 Regarding Legality of Moratorium From General Statutes  
§ 8-30g as Issued to the Town of Westport by Connecticut Department of  
Housing, March 2019

Dear Attorney Filotto:

Attached is a response of petitioner Summit Saugatuck, LLC to the "Statement of Opposition" to the Petition filed June 14, 2019 by the Town of Westport.

The petitioners await the Department's further orders pursuant to General Statutes § 4-176(e).

Thank you,

A handwritten signature in blue ink that reads "Tim Hollister".

Timothy S. Hollister

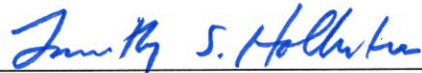
Enclosure

CERTIFICATION

I hereby certify that a copy of this letter was mailed or electronically delivered on July 10, 2019 to the following:

Ira W. Bloom, Esq.  
Westport Town Attorney  
Berchem Moses P.C.  
1221 Post Road East  
Westport, CT 06880  
[ibloom@berchemmoses.com](mailto:ibloom@berchemmoses.com)

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One Goodwin Square  
225 Asylum Street  
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Timothy S. Hollister  
Commissioner of the Superior Court

STATE OF CONNECTICUT  
DEPARTMENT OF HOUSING

OFFICE OF THE COMMISSIONER

JULY 10, 2019

RESPONSE OF SUMMIT SAUGATUCK, LLC TO TOWN OF  
WESTPORT'S JUNE 14, 2019 STATEMENT OF OPPOSITION  
TO DECLARATORY RULING PETITION

Petitioner Summit Saugatuck, LLC responds to the Town of Westport's June 14, 2019 Opposition as follows:

1. The express purpose of General Statute § 4-176 is to allow a party with a specific legal interest that has been impacted by a state agency's application of a state statute or regulations to "specified circumstances" to seek review of that action. This is exactly the purpose of the petition at issue—to determine the legality of the Department of Housing's interpretation of the moratorium provisions of General Statutes § 8-30g as applied to Westport's moratorium application.

The Town has cited no authority supporting its claim that § 4-176 is inapplicable to Summit's petition, and the Town's position on subject matter jurisdiction is directly contradicted by the text and purpose of § 4-176.

2. Summit's November 2018 § 8-30g zoning application to the Westport Planning and Zoning Commission was denied June 20, 2019. As permitted by § 8-30g(h), a "resubmission" will be filed with the Planning and Zoning Commission by July 12, 2019. That resubmission will be grandfathered from the March 2019 moratorium because it is deemed a "continuation" of the application filed in November 2018. However, the Westport Planning and Zoning Commission, in its

June 20, 2019 resolution denying Summit's zoning regulation amendment application, *has specifically cited the Department's grant of the § 8-30g moratorium as a "Reason for Denial."* (The Planning and Zoning Commission has made similar statements with regard to the Garden Homes application). See Exhibit A, attached. *Thus, the Town and the Planning and Zoning Commission is now using the March 2019 moratorium issuance as a basis to deny Summit's zoning application.* This action conclusively establishes that Summit has standing to pursue its declaratory ruling petition—a property interest that is directly and adversely impacted by the Department's March 2019 issuance of the moratorium.

3. In addition, as noted in the declaratory ruling petition, at any time in the zoning process, an applicant may need to file a new or revised application, such as one proposing an alternative site plan.

4. Finally, 60 Charles Street in Westport is owned by 60 Charles Street, LLC, but the principals of that LLC are the same as Summit Saugatuck, LLC. Thus, Summit controls a second property that is now disabled from development under § 8-30g due to the moratorium.

For these reasons, the Department should proceed with scheduling and processing of the petition as required by General Statute § 4-176.

SUMMIT SAUGATUCK, LLC

By Timothy S. Hollister

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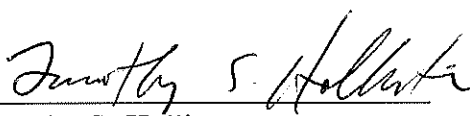
Shipman & Goodwin LLP  
One Constitution Plaza  
Hartford, CT 06103-1919  
Tel.: (860) 251-5000  
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Juris No. 057385  
Its Attorney

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed or electronically delivered on July 10, 2019 to the following:

Ira W. Bloom, Esq.  
Westport Town Attorney  
Berchem Moses P.C.  
1221 Post Road East  
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Timothy S. Hollister  
Commissioner of the Superior Court

**Exhibit A**

Hearing: Feb. 28, March 7, March 21, April 11, and April 25, 20  
Work Session: May 16, 2019, June 13, 20  
Decision: June 20, 20

June 28, 2019

Timothy Hollister, Esq.  
Shipman & Goodwin, LLP  
One Constitution Plaza  
Hartford, CT 06103-1919

**RE: TEXT AMENDMENT #760, APPLICATION #18-079**

Dear Attorney Hollister:

**RESOLUTION #18-079**

WHEREAS, THE PLANNING AND ZONING COMMISSION met on June 20, 2019 and made the following findings:

**Proposal**

1. The applicant, Summit Saugatuck LLC affiliated with Summit Development and Grossman Industries, submitted a Text Amendment for a new zoning district, § 19C, Saugatuck Village District or SV District. The Text Amendment was accompanied by the applicant's Map Amendment application and Coastal Site Plan application for an Affordable Housing Development submitted pursuant to CGS § 8-30g to build a 187 unit multi-family project.
2. On 12/13/18 Text Amendment #760/P&Z Appl. #18-079, Map Amendment #761/P&Z Appl. #18-080, and Coastal Site Plan Appl. #18-081 were officially received.
3. Text Amendment #760 proposes a new zoning district § 19C, Saugatuck Village District, or SV District, allowing the following subject to Site Plan approval from the Planning and Zoning Commission:
  - A. Multi-family dwelling units (rentals);
  - B. Exemption from cap in § 4-5, Maximum Allowable Multi-Family Dwellings;
  - C. Accessory uses including a Manager's Office, community recreational uses, customary storage buildings, surface parking and underground parking;
  - D. Accessory uses also include equipment associated with a sewer force main;
  - E. Dwelling units no greater than 2-bedrooms in size;
  - F. Maximum percentage of 2-bedroom units not to exceed 50%;
  - G. 30% of the units deed restricted as affordable housing as defined in CGS § 8-30g;
  - H. Comparable quality of market-rate and affordable units is required;
  - I. Affordable units shall be dispersed throughout the development consistent with CGS § 8-30g;
  - J. Density of 22-dwelling units per acre;
  - K. Building Height up to 62-feet and 5-stories, excluding chimneys, cupolas, and similar architectural features that are not occupiable;

- L. Building Coverage up to 35% and Total Coverage up to 60%;
  - M. Building Front setbacks of 15'; Side setbacks of 7.5'; and Rear setbacks of 10';
  - N. Parking lot/building setback of 10' to any lot containing a single-family home;
  - O. Unique minimum parking requirements including: 1.4 spaces per studio or 1-bed units; and 2 spaces per 2-bed units (*instead of 1.75 and 2.25 respectively*);
  - P. Front landscape setbacks of 15' (*instead of 30'*) with allowable projections into any required landscape area for loading spaces, porches, patios, and balconies;
  - Q. Excavation and filling exemptions for standards listed in §32-8 including approval process, depth, quantity, slope, and location; and
  - R. Connection or extension of all dwelling units to public water and public sewer.
4. The Purpose for the SV District is listed in proposed §19C-1, which states it is intended "*to promote housing choice and economic diversity within the Town of Westport.*"
  5. Planning and Zoning staff prepared a report dated 2/21/19 analyzing Text Amendment #760 that is contained in the record.
  6. The 2/21/19 report describes the multiple districts and regulations already contained in the Westport Zoning Regulations that promote both housing choices and diversity in housing options.
  7. The 2/21/19 report raised concerns about the eligibility criteria for rezoning to Saugatuck Village or SV District listed in proposed §19C-2, that describes parcels shall:
    - A. Have 100' of frontage on Hiawatha Lane or Hiawatha Lane Ext. (*which are Local Roads as specified in the 2017 Plan of Conservation and Development*);
    - B. Are at least 6 acres, but less than 11 acres in size inclusive of private rights-of-way; and
    - C. Can connect to public water and public sewer.
  8. The 2/21/19 report describes the criteria for rezoning property to the SV district requiring frontage and access to Local Roads is inconsistent with criteria used in other sections of the Zoning Regulations where higher residential density is permitted.
  9. The 2/21/19 report additionally describes the regulations for the SV district are inconsistent with the Comprehensive Plan and 2017 Plan of Conservation and Development and are therefore inconsistent with CGS §8-2 which may not be relevant when considering an application submitted pursuant to CGS §8-30g.
  10. The applicant modified Text Amendment #760 on two occasions (March 15, 2019 and April 4, 2019). In the final version, the applicant modified some of the zoning standards to better match the needs as shown on the applicant's development plans. The changes are as follows:
    - A. Building Height was revised to allow buildings up to 52-feet and 4-stories, and rooftop mechanicals, not to exceed six (6) additional feet.
    - B. Building Coverage was revised to allow 32% and Total Coverage revised to allow 55%;
    - C. Building Setbacks were revised to allow Front setbacks of 20'; Side setbacks of 10'; and Rear setbacks of 15';
    - D. Usable Open Space requirements were added specifying 125 SF of Usable Open Space is required for each dwelling unit;

- E. Language was added exempting activities in the SV District from the standards in §31-15.1 that prohibit new or expanded uses requiring more than 20 parking spaces from locating on a Local Street as defined in the Plan of Conservation and Development.
- F. Language was added providing standards to review proposed wall signs and free-standing signs located in the SV District;
- G. Language was added providing standards for measuring light spillage prohibited from occurring beyond the perimeter of the SV District;
- H. Language was removed granting authority to the Planning and Zoning Commission vested with the Town of Engineer to more clearly identify it is the Town Engineer who shall approve proposed storm drainage;
- I. Language was removed describing landscaping screening requirements for refuse containers as the proposed development will have refuse contained inside the parking garage; and
- J. Language was removed exempting applications in the SV District from submitting Comparison Maps as listed in §44-1.5 as this reference is not relevant to the proposed development.

#### REASONS FOR DENIAL

1. The Text Amendment is not necessary. The Planning and Zoning Commission has successfully created multiple affordable housing opportunities within our existing zoning regulations and realized in the form of development granted certificates of occupancy, as evidenced by:
  - A. The adoption of zoning districts and twenty three new zoning regulations that promote affordable housing as listed in the 2/21/19 report prepared by Planning and Zoning staff; and
  - B. Issuance of a *Certificate of Affordable Housing Completion* by the State of Connecticut Department of Housing published in the CT Law Journal on March 5, 2019.
2. There are a number of affordable units in Westport that, because they are preexisting, do not count toward moratorium points. Westport has encouraged and we have built additional units which will count substantially towards our second moratorium.
3. The text amendment proposes development of an Affordable Housing Development subject to Site Plan as opposed to Special Permit approval which would permit the Planning and Zoning Commission to consider health, safety, welfare and substantial public interest.
4. The text amendment proposes standards that would create unsafe conditions for future residents of such a development and current residents of the neighborhood and residents of the entire town. This text amendment does not consider existing neighborhoods, adjacent wetlands and floodplains. By permitting the development of large residential projects that do not provide for adequate access by emergency personnel the commission finds that the safety of the entire town residents is put at risk.
5. The text amendment provides no benefit to the current or future residents of Westport.
6. The proposal is not consistent with the *2017 Plan of Conservation and Development* as Chapter 8 (Maintain Distinctive Centers with a Strong Sense of Place) identifies multi-family developments are better situated to provide the residents with safe access to public transportation, and sited where adequate infrastructure exists or is available to be added. Hiawatha Lane Extension, Hiawatha Lane, Davenport Avenue, and Ferry Lane West, all local streets, cannot be widened to accommodate safe pedestrian or emergency access to and from the site.



7. The proposal is not consistent with the *March 2018 Saugatuck Transit Oriented Development Master Plan* as the project area is outside the TOD defined area as it is located beyond reasonable walking distance radius to the Westport Train Station as confirmed by the applicant's traffic consultant Michael Galante of Frederick Clark Associates, LLC.
8. The proposed text amendment is contrary to the stated policy in the Westport Zoning Regulations (Sec. 31-15), which states that uses requiring more than twenty (20) parking spaces are not allowed on local roads. The purpose of this provision is to avoid the precise problems as to public safety, traffic congestion and access by emergency vehicles that the proposed text amendment creates. The need to maintain that policy (regulation) outweighs the need for additional units of affordable housing.
9. Public hearings were held on Feb. 28, March 7, March 21, April 11, and April 25, 2019 to accept testimony and evidence and to receive comments from the public. Work sessions were held on May 16, June 6, 2019, June 13, 2019, and June 20, 2019.

For the reasons stated above, which the Commission adopts as a collective basis for its action, the Commission adopts the following Resolution (moved by Paul Lebowitz and seconded by Gregory Rutstein):

**RESOLVED:** That the application by Summit Saugatuck LLC affiliated with Summit Development as represented by Attorney Timothy Hollister of Shipman & Goodwin, LLC for **Text Amendment #760: Appl. #18-079** for a new zoning district § 19C, Saugatuck Village District, or SV District, with associated zoning standards, allowing multi-family dwelling units (rentals), no greater than 2-bedrooms in size, with 30% of the units deed restricted as affordable housing as defined in § 8-30g of the Connecticut General Statutes, at a density of 22-units per acre, in buildings up to 52-feet and 4-stories in height (except when located above underground parking), with 100' of frontage on Hiawatha Lane or Hiawatha Lane Extension, where connection to public water and public sewer is available, on properties at least 6 acres, but less than 11 acres in size, inclusive of private rights-of-way, subject to Site Plan approval by the Planning and Zoning Commission proposed in combination with a Map Amendment application to rezone property to the SV District and proposed in combination with a Coastal Site Plan application to develop property utilizing the proposed SV District standards; all three applications are considered part of a single Affordable Housing Development proposal submitted pursuant to § 8-30g of the Connecticut General Statutes is hereby **DENIED**.

**VOTE:**

AYES	0	
NAYS	7	{Stephens, Olefson, Walsh, Lebowitz, Dobin, Rutstein, Cammeyer}
ABSTENTIONS	0	

Westport Planning and Zoning Commission

By Paul Lebowitz, It's Chairman

cc: First Selectman Marpe  
Town Attorney Bloom  
Attorney Peter Gelderman  
Mr. Sharat Kalluri, Peer Reviewer  
Mr. Andrew Kingsbury, Peer Reviewer  
RTM P&Z Committee Chairman  
DPW Director Ratkiewich  
Fire Marshal Gibbons  
Police Chief Koskinas