Things to Watch Out For: Affordable Housing, Fair Housing, And Religious Land Uses

Connecticut Land Use Law For Municipal Land Use Agencies, Boards, and Commissions

Wesleyan University
March 5, 2005

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AN INTRODUCTION TO AFFORDABLE HOUSING, FAIR HOUSING, AND RELIGIOUS LAND USES

Presentation Outline – March 5, 2005

Affordable Housing

1. Why do we have an affordable housing statute?

2. The Zoning Enabling Act (Conn. Gen. Stat. § 8-2) and affordable housing

3. The State's "Ten Percent List" and exempt/non-exempt towns/moratorium

4. Two types of "affordable housing development"

5. Sample calculations of maximum prices/rents for affordable units

6. Burden-shifting section of Conn. Gen. Stat. § 8-30g; how it differs from traditional appeals

7. The four-prong test

8. What land use applications are covered by the Act?

9. "Substantial public interests in health or safety"

10. "Clearly outweigh the need for affordable housing"

11. Processing the § 8-30g application

12. The resubmission procedure

Fair Housing

1. Federal and Connecticut prohibitions/protected classes

2. Fair housing concerns in planning and zoning

3. “Familial status”

4. Age-restricted housing

5. Housing for persons with disabilities

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BIOGRAPHICAL NOTE FOR
Timothy S. Hollister

Timothy S. Hollister is a partner in the Hartford office of Shipman & Goodwin LLP, where he practices land use, environmental and municipal law. He graduated from Wesleyan University in 1978, received a Masters Degree in Urban Studies from Occidental College (Los Angeles) in 1980, and a law degree from Boston University in 1982. In 2002, Tim was awarded the designation of "Local Government Law Fellow" by the International Municipal Lawyers Association, becoming the first Connecticut attorney to received this recognition. In 2004, he received the Distinguished Service Award from the Home Builders Association of Connecticut for his work on affordable housing, federal civil rights cases, and state wetlands legislation. He served in 1996-97 as Chair of the Environmental Law Section of the Connecticut Bar Association and is the current Chair of the Association's Affordable Housing and Homelessness Committee.

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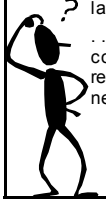
Affordable Housing

Why do we have an affordable housing statute?



. . . [The] Subcommittee nonetheless believes that too often the equally important concern of providing an adequate supply of housing at affordable prices has been ignored in the decisions of some local land use commissions . . . .

. . . [It] appears that many times the local commissions' decisions elevate vaguely-stated and relatively unimportant concerns over the important need to build affordable housing.

- Report of the Governor's Blue Ribbon Commission to Study Affordable Housing, 1988.

Obligation of ALL municipalities with respect to affordable housing:

General Statutes § 8-2

Such regulations shall also encourage the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located . . . . **Such regulations shall also promote housing choice and economic diversity in housing, including housing for both low and moderate income households . . . .**

The "Ten Percent List" – permanent exemption from affordable housing statute:

1. DECD's Count of:
   - CHFA mortgages
   - Governmentally-assisted units
   - Deed restricted units
2. Intent: A measure of impact of government housing funds on a municipality
3. The list is NOT:
   - State's determination that 10% of housing stock as affordable is sufficient
   - A measure of local need for affordable housing
4. Today, 30 of 169 municipalities exempt

Under "Section 8-30g," two types of "affordable housing developments":

– Set aside developments: Applicant agrees to preserve, for 40 years, 15 percent of units for households earning 80 percent or less of area median/statewide median (whichever is less), and 15 percent for households earning 60 percent or less

or

– Units built with financial assistance from the government

Example: Set aside development (60% of median), two bedroom sale unit, Wallingford, CT (2004):

– Median income, adjusted for unit/household size:	$64,800
– $64,800 x 60% =	$38,880
– $38,880 x 30% =	$11,664
– $11,664 ÷ 12 months =	$972/month
– Minus estimated monthly taxes, insurance, mandatory fees, utility allowance	$365
– Left for mortgage, principal, and interest	$607/month
– $607 at 7% for 30 years will support mortgage of	$92,000 (approx.)
– Maximum downpayment 20%	$23,000
– Maximum sale (or resale) price	$115,000

Example: Affordable (80% of median), bedroom rental unit, Ridgefield, CT:

– Median income, adjusted for household size:	$64,800
– $64,800 x 80% =	$51,840
– $51,840 x 30% =	$15,552
– $15,552 ÷ 12 months =	$1,296/month
– Compare to 120 percent of HUD Fair Market Rent 2005 (take lower number)	$1,330/month
– Maximum monthly payment (including utility allowance)	$1,296

The basic feature of § 8-30g: burden of proof shifts to commission to defend denial reasons:

Traditional Land Use Case

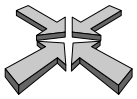
- Property owner's/applicant's burden
- To show lack of evidence to support, or illegality
- Court defers to local commissioners' decision factual findings, interpretations of regulations, conclusions

Affordable Housing Case

- Burden on commission on appeal to court
- Limited deference
- Court, not commission, decides, based on review of record

Note: Burden shifts for (1) denials and (2) substantial modifications or conditions of approval that impact affordability

Four prongs of burden of proof:



As to each reason for denial, commission must prove

(1) Sufficient evidence in record

(2) Of a "substantial public interest in health or safety or other matters that the commission may legally consider"

(3) This interest "clearly outweighs the need for affordable housing"

(4) Commissioners' concerns cannot be addressed by "reasonable changes" to development plan

What land use permit applications are covered by § 8-30g:

- Amendment to regulations
- Zone changes
- Special permits/exceptions
- Site plans
- Variances
- Subdivisions

What is not covered

- Wetlands
- Sewer
- Other utility connections
- State Traffic Commission
- Other federal, state and local permits

Substantial public interests Court conducts independent review – no deference to commission opinions:

Substantial interests

- Inadequate water supply
- Inadequate sewage disposal capacity
- Documented traffic safety problem
- Inadequate emergency access

Not substantial or not legal

- Aesthetics
- "Character of the town"
- Existence of other affordable (but market-rate) housing
- In general, existing density
- Impact on schools, taxes, property values

"Need for affordable housing":

- Commission must balance need for affordable housing against identified interest in health or safety

- This prong often neglected in denial resolutions

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Processing the § 8-30g application:

1. Usually need to retain experts to evaluate application; denials or modifications will not stand without evidence
2. Resolutions should address all four prongs of burden of proof, with citations to record. Generalized denials less likely to hold up

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Resubmission procedure:

- Unique to § 8-30g applications
- If application denied or substantially modified, applicant may reapply to Commission within 15 days from published notice
- Record from initial application carried forward
- 65 days from receipt to Commission action, no extensions

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Fair Housing Act (Federal and Connecticut)

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Protected classes:

- Federal: race, color, religion, sex, familial status, disability, or national origin
- Connecticut additions to federal law: creed, ancestry, marital status, age, and "lawful source of income"

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Fair housing considerations in planning and zoning:

- Discrimination against families with children vs. bona fide age-restricted housing
- Housing for persons with "disabilities"
- Fiscal zoning

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Familial status:

"One or more individuals under 18 who live with a parent or other person with legal custody"

(i.e., the presence of children in the household)

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Age-restricted housing is an exemption from the fair housing statutes:

- Two categories to meet "Housing for Older Persons" exemption:

1) 62 and older exemption
   - All residents must be over age 62
   - Intended for the use of those residents

2) at least 80 percent of units have at least one occupant 55 or older

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Housing for persons with "disabilities":

- "Disability" means any impairment of ability to carry out a basic life function
- Statute covers most group homes
- Gray area: halfway houses for recovery from drug addition
- General Statutes §§ 8-3(e) and (f): facilities for six or less mentally retarded persons or children with physical or mental disabilities – treated same as single-family residence

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Religious Land Uses

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Connecticut religious freedom statute:

- Conn. Gen. Stat. § 52-571b:
  "The state or any political subdivision of the state may burden a person's exercise of religion only if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest, and (2) is the least restrictive means of furthering that compelling governmental interest."
- No interpretation to date from any Connecticut court with respect to land use

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Prohibition of RLUIPA (federal statute):

No government shall impose or implement a land use regulation in a manner that imposes a **substantial burden** on the religious exercise of a person . . . unless the government demonstrates that the burden is in furtherance of a **compelling governmental interest** and is the **least restrictive means** of furthering that interest

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Religious exercise:

- Any exercise of religion, whether or not compelled by, or central to, a system of religious belief
- Includes use, building, or conversion of real property for the purpose of religious exercise

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RLUIPA examples:

- Prayer services in single-family homes
- Storefront churches
- Homeless shelters and social services
- Radio/media station operating from residential neighborhood
- Church establishes skateboarding park in a residential subdivision
- Colleges claiming athletic fields and stadiums are religious exercise

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Compelling government interest:

Case law includes:

- Integrity of zoning scheme
- Protection of residential neighborhoods
- Regulation of homeless shelters
- Regulation of building aesthetics
- Traffic control
- Public safety

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Least restrictive means:

Fact-specific inquiry; therefore, the more reasonable the restrictions, the more likely to pass muster

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How to handle a potential RLUIPA application:

➡ Flag "religious" application when submitted
➡ Involve Town Attorney from outset of application
➡ Develop a strong, substantive record with well-articulated findings of fact
➡ Consider least restrictive means available of achieving government's interest

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Supplementary Materials –

Affordable Housing

Timothy S. Hollister
Experience With Affordable Housing

- Partner, Shipman & Goodwin LLP, Hartford Office
- Practice concentration in land use and environmental law
- Member, Blue Ribbon Commission to Study Affordable Housing, August 1999 – February 2000
- Participated in meetings of Governor's Blue Ribbon Commission on Housing, 1988-89
- Participated in drafting of Public Act 89-311 during 1989 legislative session and Public Act 00-206 during 2000 legislative session
- Under contract to the Connecticut Department of Economic and Community Development, provided technical assistance in drafting statewide regulations adopted in June 2002 governing affordable housing applications, see Regs. Conn. State Agencies §§ 8-30g-1 to 8
- Represented Home Builders Association of Connecticut in Builders' Service Corp. v. East Hampton PZC, 208 Conn. 267 (1988)
- Represented Trammell Crow Residential in first case decided under § 8-30g by Superior Court, TCR New Canaan v. Trumbull PZC (March 1992).
- Since 1990, represented applicants/developers in affordable housing applications in Avon, Beacon Falls, Bethany, Bethel, Branford, Canton, Cheshire, Danbury, Darien, Milford, Monroe, New Canaan, New Milford, Newtown, North Branford, North Canaan, Norwalk, Orange, Ridgefield, Simsbury, Stamford, Stratford, Thomaston, Tolland, Trumbull, Wallingford, Westport, and Wilton
- Speaker on § 8-30g to Northeast Council of Governments, Connecticut Bar Association, Connecticut Conference of Municipalities, International Municipal Lawyers Association, Connecticut Housing Coalition, Connecticut Community Development Association, Southwest Regional Planning Commission, Select Committee on Housing, and Planning and Development Committee of Connecticut General Assembly
- Appointed special master in 1995 to assist Connecticut Superior Court judge in settlement of affordable housing litigation
- Author, "Not in My Town," The Hartford Courant, February 27, 1994, p. D1

- Author, "Zoning 'for the Living Welfare': The Status of Affordable Housing Litigation in Connecticut," Conn. Real Estate Law Journal, Vol. 10, No. 1 (1992)

- Author, Brief Amicus Curiae of Connecticut Housing Coalition, et al., Quarry Knoll II Corp., et al. v. Planning and Zoning Commission of the Town of Greenwich, et al., Connecticut Supreme Court decision, July 2001

- Member, West Hartford Housing Partnership, 1992-1994

- Counsel to the Connecticut Coalition to End Homelessness

- Designated a "Local Government Law Fellow" by the International Municipal Lawyers Association, for "demonstrated excellence in the field of local government law," October 2002

- Distinguished Service Award, Home Builders Association of Connecticut, December 2004

1/05

*3883

West's Connecticut General Statutes Unannotated
TITLE 8. ZONING, PLANNING, HOUSING, ECONOMIC AND COMMUNITY DEVELOPMENT AND HUMAN RESOURCES
CHAPTER 124. ZONING

Current through 2004 Feb. Reg. Sess. and May Sp. Sess.

§ 8-2. Regulations

(a) The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes, including water-dependent uses as defined in section 22a-93, and the height, size and location of advertising signs and billboards. Such bulk regulations may allow for cluster development as defined in section 8-18. Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district, and may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may, notwithstanding any special act to the contrary, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. Such regulations shall be made in accordance with a comprehensive plan and in adopting such regulations the commission shall consider the plan of conservation and development prepared under section 8-23. Such regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. Such regulations may, to the extent consistent with soil types, terrain, infrastructure capacity and the plan of conservation and development for the community, provide for cluster development, as defined in section 8-18, in residential zones. Such regulations shall also encourage the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under section 16a-4a. Such regulations shall also promote housing choice and economic diversity in housing, including housing for both low and moderate income households, and shall encourage the development of housing which will meet the housing needs identified in the housing plan prepared pursuant to section 8-37t and in the housing component and the other components of

the state plan of conservation and development prepared pursuant to section 16a-26. Zoning regulations shall be made with reasonable consideration for their impact on agriculture. Zoning regulations may be made with reasonable consideration for the protection of historic factors and shall be made with reasonable consideration for the protection of existing and potential public surface and ground drinking water supplies. On and after July 1, 1985, the regulations shall provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-329. Such regulations may also encourage energy-efficient patterns of development, the use of solar and other renewable forms of energy, and energy conservation. The regulations may also provide for incentives for developers who use passive solar energy techniques, as defined in subsection (b) of section 8-25, in planning a residential subdivision development. The incentives may include, but not be limited to, cluster development, higher density development and performance standards for roads, sidewalks and underground facilities in the subdivision. Such regulations may provide for a municipal system for the creation of development rights and the permanent transfer of such development rights, which may include a system for the variance of density limits in connection with any such transfer. Such regulations may also provide for notice requirements in addition to those required by this chapter. Such regulations may provide for conditions on operations to collect spring water or well water, as defined in section 21a-150, including the time, place and manner of such operations. No such regulations shall prohibit the operation of any family day care home or group day care home in a residential zone. Such regulations shall not impose conditions and requirements on manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards or on lots containing such manufactured homes which are substantially different from conditions and requirements imposed on single-family dwellings and lots containing single-family dwellings. Such regulations shall not impose conditions and requirements on developments to be occupied by manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on multifamily dwellings, lots containing multifamily dwellings, cluster developments or planned unit developments. Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations. Such regulations shall not provide for the termination of any nonconforming use ***3883** solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use. Any city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough; but unless it is so voted municipal property shall be subject to such regulations.

***3884** (b) In any municipality that is contiguous to Long Island Sound the regulations adopted under this section shall be made with reasonable consideration for restoration and protection of the ecosystem and habitat of Long Island Sound and shall be designed to reduce hypoxia, pathogens, toxic contaminants and floatable debris in Long Island Sound. Such regulations shall provide that the commission consider the environmental impact on Long Island Sound of any proposal for development.

(c) In any municipality where a traprock ridge, as defined in section 8-1aa, or an amphibolite ridge, as defined in section 8-1aa, is located the regulations may provide for development restrictions in ridgeline setback areas, as defined in said section. The regulations may restrict quarrying and clear cutting, except that the following operations and uses shall be permitted in ridgeline setback areas, as of right: (1) Emergency work necessary to protect life and

property; (2) any nonconforming uses that were in existence and that were approved on or before the effective date of regulations adopted under this section; and (3) selective timbering, grazing of domesticated animals and passive recreation.

CREDIT(S)

(1949 Rev., § 837; Nov., 1955, Supp. § N 10; 1959, P.A. 614, § 2; 1959, P.A. 661; 1961, P.A. 569, § 1; 1963, P.A. 133; 1967, P.A. 801; 1977, P.A. 77-509, § 1; 1978, P.A. 78-314, § 1; 1980, P.A. 80-327, § 1; 1981, P.A. 81-334, § 2; 1983, P.A. 83-388, § 6, eff. July 1, 1985; 1984, P.A. 84-263; 1985, P.A. 85-91, § 2, eff. May 1, 1985; 1985, P.A. 85-279, § 3; 1987, P.A. 87-215, § 1, eff. July 1, 1987; 1987, P.A. 87-232; 1987, P.A. 87-474, § 1; 1987, P.A. 87-490, § 1; 1988, P.A. 88-105, § 2; 1988, P.A. 88-203, § 1; 1989, P.A. 89-277, § 1, eff. Oct. 1, 1989; 1991, P.A. 91-170, § 1; 1991, P.A. 91-392, § 1; 1991, P.A. 91-395, § 1, eff. July 1, 1991; 1992, P.A. 92-50; 1993, P.A. 93-385, § 3; 1995, P.A. 95-239, § 2; 1995, P.A. 95-335, § 14, eff. July 1, 1995; 1997, P.A. 97-296, § 2, eff. July 8, 1997; 1998, P.A. 98-105, § 3.)

*4001

West's Connecticut General Statutes Unannotated
TITLE 8. ZONING, PLANNING, HOUSING, ECONOMIC AND COMMUNITY DEVELOPMENT AND HUMAN RESOURCES
CHAPTER 126A. AFFORDABLE HOUSING LAND USE APPEALS

Current through 2004 Feb. Reg. Sess. and May Sp. Sess.

§ 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

(a) As used in this section:

(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 319uu [FN1] 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;

*4002 (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 Economic and Community Development.

(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 54 [FN2] 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 shall 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.

*4003 (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 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 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) 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, 8-30 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 said section 8-8, 8-9, 8-28, 8-30 or 8-30a, as applicable.

***4004** (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, as defined in subsection (a) of this section. 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

Burden of proof

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, 8-30 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.

***4005** (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, 8-30 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) Notwithstanding the provisions of subsections (a) to (j), inclusive, of this section, 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, or (2) currently financed by Connecticut Housing Finance Authority mortgages, or (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, or (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. The Commissioner of Economic and Community Development shall, pursuant to regulations adopted under the provisions of chapter 54, promulgate a list of municipalities which satisfy the criteria contained in this subsection and shall update such list not less than annually. For the purpose of determining the percentage required by this subsection, the commissioner shall use as the denominator the number of dwelling units in the municipality, as reported in the most recent United States decennial census. 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.

*4006 (l) (1) Notwithstanding the provisions of subsections (a) to (j), inclusive, of this section, 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 be the four-year period after (A) a certification of affordable housing project completion issued by the commissioner is published in the Connecticut Law Journal, or (B) after notice of a provisional approval is published pursuant to subdivision (4) of this subsection. Any moratorium that is in effect on October 1, 2002 is extended by one year.

(2) Notwithstanding the provisions of this subsection, 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 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 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.

(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.

*4007 (5) For purposes of this subsection, "elderly units" are dwelling units whose occupancy is restricted by age and "family units" are dwelling units whose occupancy is not restricted by age.

(6) For 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 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 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 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 median income shall be awarded two points if an ownership unit and two and one-half points if a rental unit. (E) Elderly units restricted to persons and families whose income is equal to or less than eighty per cent of median income shall be awarded one-half point. (F) 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.

(7) Points shall be awarded only 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 per cent of median income.

(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.

*4008 (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.

CREDIT(S)

(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.)

[FN1] C.G.S.A. § 17b-800 et seq.

[FN2] C.G.S.A. § 4-166 et seq.

*4009

West's Connecticut General Statutes Unannotated
TITLE 8. ZONING, PLANNING, HOUSING, ECONOMIC AND COMMUNITY DEVELOPMENT AND HUMAN RESOURCES
CHAPTER 126A. AFFORDABLE HOUSING LAND USE APPEALS

Current through 2004 Feb. Reg. Sess. and May Sp. Sess.

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

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.

CREDIT(S)

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

AFFORDABILITY PLAN FOR OLDE OAK VILLAGE WALLINGFORD, CONNECTICUT

April 8, 2002

Submitted by Verna Developers and The Wallingford Housing Authority to the Wallingford Planning and Zoning Commission

PREPARED BY:
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DEFINITIONS:

"**Community**" -- means the Olde Oak Village development, a 80 unit single-family home development in a common interest community, approved by the Wallingford Planning and Zoning Commission, as more fully described in **Schedule A**. The site plan is on file with that Commission.

"**Housing Opportunity District Home**" **or "HOD Home"** – means a home within the Olde Oak Village development that is subject to long-term price restrictions as set forth in this plan.

"**Model Home**" – means a single-family detached home within the Olde Oak Village development that will be constructed to the minimum specifications set forth in **Schedule C** of this plan, and will be sold at fair market value.

"**Developer**" – means Verna Developers or its successors and assigns.

I. Homes Designated for Affordable Housing.

Thirty percent (30%), or twenty-four (24), of the homes of the Community will be designated as affordable housing units, as defined by Conn. Gen. Stat. Section 8-30g. The specific homes designated as affordable housing (to be called "HOD Homes") are identified in **Schedule B** attached hereto.

II. Fifty (50) Year Period.

The HOD Homes shall be designated as affordable for fifty (50) years. The fifty (50) year affordability period shall be calculated separately for each HOD Home, and the period shall begin on the date of conveyance of such HOD Home from the Developer or its successors or assigns to an eligible purchaser, as hereinafter defined.

III. Pro-Rata Construction.

The HOD Homes shall be built on a *pro rata* basis as construction proceeds. It is the Developer's intent, therefore, to build and offer for sale three (3) HOD Homes within the time that ten (10) total units are built and sold.

IV. Nature of Construction of HOD Homes and Market-Rate Homes.

Within the Community, the Developer shall offer a Model Home, for sale at market value, which shall be built in compliance with the minimum specification which include square footage, exterior finishes, interior materials, and amenities set forth in **Schedule C** of this Affordability Plan. Purchasers of market-rate homes within the Community may upgrade or alter any aspect of the specifications for the Model Home. However, each HOD Home shall contain not less than eighty-five percent (85%) of the square footage of the Model Home, and shall be constructed in compliance with the minimum specification set forth in **Schedule C**, the intent of this section being that each HOD Home shall be comparable in size, quality, and appearance to the Model Home.

V. Entity Responsible for Administration and Compliance.

This Affordability Plan will be administered by the Wallingford Housing Authority, or its designees, successors and assigns ("Administrator"). The Administrator shall submit a status report to the Town on compliance with this Affordability Plan annually on or about January 31. Notwithstanding any of the above, the Developer will be responsible for all advertising and marketing requirements for initial sales under this Plan.

VI. Notice of Initial Sale of HOD Homes.

Except as provided in Section X hereof, the Developer shall provide notice of the availability of each HOD Home for purchase (the "Notice of Initial Sale"). Such notices shall be provided in accordance with the Affirmative Fair Housing Marketing Plan as outlined in Section VIII. The Administrator shall also provide such notice to the Commission. Such notice shall include a description of the available HOD Home(s), the eligibility criteria for potential purchasers, the Maximum Sale Price (as hereinafter defined), and the availability of application forms and additional information. All such notices shall comply with the federal Fair Housing Act, 42 U.S.C. Section 3601 et seq. and the Connecticut Fair Housing Act, Conn. Gen. Stat. Sections 46a-64b, 64c (together, the "Fair Housing Acts").

VII. Purchaser Eligibility.

Fifteen percent (15%) (twelve (12) homes in the Community) of the homes for sale shall be offered to families whose income is less than or equal to sixty percent (60%) of the area or statewide median income, whichever is less. Fifteen percent (15%) (twelve (12) homes in the Community) of the homes for sale shall be offered to families whose income is greater than sixty percent (60%) but less than or equal to eighty percent (80%) of the area or statewide median income, whichever is less. The area and statewide median income shall be as determined by the U.S. Department of Housing and Urban Development ("HUD"). Purchasers shall be permitted to make down payments that exceed ten (10%) percent of the purchase price; however, for the purposes of calculating the Maximum Sales Price, a ten percent (10%) down payment shall be used.

VIII. Affirmative Fair Housing Marketing Plan.

The sale of both HOD Homes and market-rate units in Olde Oak Village shall be publicized, using State regulations for affirmative fair housing marketing programs as guidelines. The purpose of such efforts shall be to apprise residents of municipalities of relatively high concentrations of minority populations of the availability of such units. The Developer shall have responsibility for compliance with this section. Notices of initial availability of units shall be provided, at a minimum, by advertising at least two times in a newspaper of general circulation in such identified municipalities. The Administrator shall also provide such notices to the Wallingford Planning and Zoning Commission and the local housing authority. Such notices shall include a description of the available HOD Home(s), the eligibility criteria for potential purchasers, the Maximum Sale Price (as hereinafter defined), and the availability of application forms and additional information.

Using the above-referenced State regulations as guidelines, dissemination of information about available affordable and market rate units shall include:

A. Analyzing census, Connecticut Department of Economic and Community Development town profiles, and other data to identify racial and ethnic groups

least likely to apply based on representation in Wallingford's population, including Asian Pacific, Black, Hispanic, and Native American populations.

B. Announcements/advertisements in publications and other media that will reach minority populations, including newspapers, such as Record Journal or New Haven Register or radio stations serving Meriden, New Haven and other towns in the metropolitan statistical area and regional planning area, and advertisements or flyers likely to be viewed on public transportation or public highway areas.

C. Announcements to social service agencies and other community contacts serving low-income minority families (such as churches, civil rights organizations, the housing authority and other housing authorities in towns represented in the South Central Regional Planning Agency, legal services organizations, etc.).

D. Assistance to minority applicants in processing applications.

E. Marketing efforts in geographic area of high minority concentrations within the housing market area and metropolitan statistical area.

F. Beginning affirmative marketing efforts prior to general marketing of units, and repeating again during initial marketing and at 50 percent completion.

All notices shall comply with the federal Fair Housing Act, 42 U.S.C. §§ 3601 et seq. and the Connecticut Fair Housing Act, Conn. Gen. Stat. §§ 46a-64b, 64c (together, the "Fair Housing Acts").

IX. Application Process.

A family or household seeking to purchase one of the HOD Homes ("Applicant") must complete an application to determine eligibility. The application form and process shall comply with the Fair Housing Act.

A. Application Form.

The application form shall be provided by the Administrator and shall include an income pre-certification eligibility form and an income certification form. In general, income for purposes of determining an Applicant's qualification shall include the Applicant family's total anticipated income from all sources for the twelve (12) month period following the date the application is submitted ("Application Date"). If the Applicant's financial disclosures indicate that the Applicant may experience a significant change in the Applicant's future income during the twelve (12) month period, the Administrator shall not consider this change unless there is a reasonable assurance that the change will

in fact occur. The Applicant's income need not be re-verified after the time of initial purchase. In determining what is and is not to be included in the definition of family annual income, the Administrator shall use the criteria set forth by HUD and listed on **Schedule D**, attached.

B. Applicant Interview.

The Administrator shall interview an Applicant upon submission of the completed application. Specifically, the Administrator shall, during the interview, undertake the following:

1. Review with the Applicant all the information provided on the application.
2. Explain to the Applicant the requirements for eligibility, verification procedures, and the penalties for supplying false information.
3. Verify that all sources of family income and family assets have been listed in the application. The term "family" shall be as defined by the Zoning Regulations of the Town of Wallingford.
4. Request the Applicant to sign the necessary release forms to be used in verifying income. Inform the Applicant of what verification and documentation must be provided before the application is deemed complete.
5. Inform the Applicant that a certified decision as to eligibility cannot be made until all items on the application have been verified.
6. Review with the Applicant the process and restrictions regarding re-sale.

C. Verification of Applicant's Income.

Where it is evident from the income certification form provided by the Applicant that the Applicant is not eligible, additional verification procedures shall not be necessary. However, if the Applicant appears to be eligible, the Administrator shall issue a pre-certification letter. The letter shall indicate to the Applicant and the Developer that the Applicant is income eligible, subject to the verification of the information provided in the Application. The letter will notify the Applicant that he/she will have thirty (30) days to submit all required documentation.

If applicable, the Applicant shall provide the documentation listed on **Schedule E** attached hereto, to the Administrator. This list is not exclusive, and the Administrator may require any other verification or documentation, as the Administrator deems necessary.

X. Prioritization of Applicants for Initial Sale.

If, after publication of the Notice of Initial Sale as described in Section VI hereof, the number of qualified Applicants exceeds the number of HOD Homes, then the Administrator shall establish a priority list of applicants based on a "first come, first served" basis, subject to the applicant's income pre-certification eligibility and the preferences as established in this Section X. The HOD Homes will then be offered according to the applicant's numerical listing. In the event the Community is built in phases, the same procedure shall be held for each phase.

An employee or resident of the Town, the child or parent of a resident of the Town, and those who met the criteria of "least likely to apply" as defined in Conn. Agencies Regs. § 8-37ee, all of whom meet the income eligibility criteria as set forth in Section VII hereof, shall be given first preference in the purchase of one of every three (3) HOD Homes offered for sale in the Community ("Preferred Units"). Fifty percent (50%) of the Preferred Units shall be designated for those persons whose income is less than or equal to sixty percent (60%) of the area or statewide median income, whichever is less, and the balance of the Preferred Units shall be designated for those persons whose income is greater than sixty percent (60%) but less than or equal to eighty percent (80%) of the area or statewide median income, whichever is less. This preference category is subject to revision as may be required by the federal Office of Fair Housing and Equal Opportunity. This preference shall apply to the initial sales, but not to subsequent re-sales, of the HOD Homes.

XI. Maximum Initial Sale Price.

Calculation of the maximum initial sale price ("Maximum Initial Sale Price") for a HOD Home, so as to satisfy Conn. Gen. Stat. Sections 8-30g, shall utilize the lesser of the area median income data for the Town or the statewide median income as published by HUD as in effect on the day a purchase and sale agreement is accepted by the owner of the HOD Home ("Owner"). The Maximum Initial Sale Price shall be calculated as follows:

Example of Calculation of Sales Price for a 3 bedroom home for a family earning less than 60% of Median Income:	Sample computations based on FY 2001 data.
1. Determine lower of area or statewide median Income for a family of four (4):	$ 63,500
2. Determine the adjusted income for a household of 4.5 persons by calculating 104% of item 1:	$ 66,040
3. Calculate 60% of item 2:	$ 39,624

4.	Calculate 30% of item 3 representing the maximum portion of a family's income that may be used for housing:	$ 11,887
5.	Divide item 4 by twelve (12) to determine the maximum monthly outlay:	$ 991
6.	Determine by reasonable estimate monthly expenses, including real estate taxes ($175), utilities ($145) and insurance ($30) and, common interest charges ($50):	$ 400
7.	Subtract item 6 from item 5 to determine the amount available for mortgage principal and interest:	$ 591
8.	Apply item 7 to a reasonable mortgage term (such as 30 years) at a reasonably available interest rate (7% rate for the sample calculation) to determine mortgage amount:	$ 90,000
9.	Assume 10% down payment:	$ 10,000
10.	Add items 8 and 9 to determine MAXIMUM SALE PRICE:	$ 100,000

Example of Calculation of Sales Price of a 3 bedroom home for a family earning between 60% and 80% of Median Income:		Sample computations based on FY 2001 data.
1.	Determine lower of area or statewide median Income for a family of four (4):	$ 63,500
2.	Determine the adjusted income for a household of 4.5 by calculating 104% of item 1:	$ 66,040
3.	Calculate 80% of item 2:	$ 52,832
4.	Calculate 30% of item 3 representing the maximum portion of a family's income that may be used for housing:	$ 15,850
5.	Divide item 4 by twelve (12) to determine the Maximum monthly outlay:	$ 1,321
6.	Determine reasonable estimate expenses, including real estate taxes ($210), utilities ($145), insurance ($50) and common interest charges ($50):	$ 455
7.	Subtract item 6 from item 5 to determine the amount available for mortgage principal and interest:	$ 866
8.	Apply item 7 to a reasonable mortgage term (such as 30 years) at a reasonably available interest rate (7% rate for the sample calculation) to determine mortgage amount:	$ 130,000
9.	Assume 10% down payment:	$ 14,444
10.	Add items 8 and 9 to determine MAXIMUM SALES PRICE:	$ 144,444

XII. Principal Residence.

HOD Homes shall be occupied only as an Owner's principal residence. Leasing of HOD Homes by the Owner shall be prohibited.

XIII. Requirement to Maintain Condition.

All Owners are required to maintain their homes. The Owner shall not destroy, damage or impair the home, allow the home to deteriorate, or commit waste on the home. When a HOD Home is offered for re-sale, the Administrator may cause the home to be inspected.

XIV. Resale of a HOD Home.

An Owner may sell his or her HOD Home at any time, provided that the Owner complies with the restrictions concerning the sale of homes as set forth in this Affordability Plan and in the deed restrictions attached hereto as **Schedule F** (the "Deed Restrictions"). If the Owner wishes to sell, the Owner shall notify the Administrator in writing. The Owner shall pay the Administrator a fee to cover the cost of administering the sale. The Administrator shall then work with the Owner to calculate a Maximum Resale Price, as set forth in this Section XIV. The Administrator shall publish notice of the availability of the home in the same manner as was followed for the initial sale, as set forth in Section VI above. The Administrator shall bring any purchase offers received to the attention of the Owner.

The Owner may hire a real estate broker or otherwise individually solicit offers, independent of the Administrator's action, from potential purchasers. The Owner shall inform any potential purchaser of the affordability restrictions before any purchase and sale agreement is executed by furnishing the potential purchaser with a copy of this Affordability Plan. The purchase and sale agreement shall contain a provision to the effect that the sale is contingent upon a determination by the Administrator that the potential purchaser meets the eligibility criteria set forth in this Plan. Once the Owner and potential purchaser execute the purchase and sale agreement, the potential purchaser shall immediately notify the Administrator in writing. The Administrator shall have thirty (30) days from such notice to determine the eligibility of the potential purchaser in accordance with the application process set forth in Section IX above. The Administrator shall notify the Owner and the potential purchaser of its determination of eligibility in writing within said thirty (30) day period. If the Administrator determines that the potential purchaser is not eligible, the purchase and sale agreement shall be void, and the Owner may solicit other potential purchasers. If the Administrator determines that the potential purchaser is eligible, the Administrator shall provide the potential purchaser and the Owner with a signed certification, executed in recordable form, to the effect that the sale of the particular Home has complied with the provisions of this Affordability Plan. The Owner shall bear the cost of recording the certification.

XV. Enforcement

A violation of this Affordability Plan or the Deed Restrictions shall not result in a forfeiture of title, but the Wallingford Planning and Zoning Commission or its designated agent shall otherwise retain all enforcement powers granted by the Connecticut General Statutes, including Section 8-12, which powers include, but are not limited to, the authority, at any reasonable time, to inspect the property and to examine the books and records of the Administrator to determine compliance of HOD Homes with the affordable housing regulations.

XVI. Deed Restrictions

The Deed Restrictions contained in **Schedule F** shall be included in each deed of a HOD Home during the fifty (50) year period in which the affordability program is in place to provide notice of the affordability restrictions and to bind future purchasers.

XVII. Binding Effect

This Affordability Plan shall be binding on the successors and assigns of the Developer.

SCHEDULE A – PROPERTY DESCRIPTION

Description of Property at 125 South Turnpike Road; reference to site plan approval.

Parcel: G-2

Area: 1,201,010 Square Feet, 27.571 Acres

A certain parcel of land located in the Town of Wallingford, County of New Haven, and State of Connecticut being more particularly bounded and described as follows:

Beginning at a point on the westerly streetline of South Turnpike Road at the division line between land now or formerly of the DiNatale Bros., Inc. (Parcel F) and the parcel herein described;

thence running North 65°-39'-44" West 237.36 feet to a point, thence turning and running North 16°-42'-54" West 335.82 feet to a point, thence turning and running North 50°-43'-24" West 196.47 feet, all along land now or formerly of DiNatale Bros., Inc. (Parcel F), to a point;

thence running North 24°-20'-16" East 643.70 feet to a point, thence turning and running North 51°-28'-44" West 369.96 feet, all along land now or formerly of DiNatale Bros., Inc. (Parcel D), to a point;

thence running North 14°-24'-54" West 39.90 feet to a point, thence turning and running North 22°-39'-33" East 550.17 feet, all along land now or formerly of DiNatale Bros., Inc. (Parcel E), to a point;

thence running South 66°-24'-38" East 637.66 feet all along land now or formerly of Oakdale Development Limited Partnership to a point;

thence running South 23°-35'-22" West 42.20 feet to a point, thence turning and running South 66°-24'-38" East 407.60 feet, all along land now or formerly of Barde Associates, to a point;

thence running South 24°-08'-48" West 718.73 feet to a point, thence turning and running South 24°-22'-39" West 872.02 feet, all along the westerly streetline of South Turnpike Road, to the point of beginning.

Being more particularly bounded and described on a map entitled: "Property Survey Prepared For: Verna Developers, Parcel G-2, 125 South Turnpike Road, Wallingford, Connecticut," Scale: 1"-100', Dated: August 3, 2001, Prepared by: Milone & MacBroom, Inc.

SCHEDULE B – IDENTIFICATION OF HOD HOMES

Lot Number:

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56
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74
80

SCHEDULE C - MINIMUM SPECIFICATIONS FOR MODEL AND HOD HOMES

Foundation:
Footings –poured concrete w/footing drain
Cellar Walls – poured concrete w/waterproofing and foundation coating
Floors – poured concrete

Structural:
Framing and Sheathing – as per building code
Exterior Wall – 2" x 4"
Interior Wall – 2" x 4"
Back Deck – Pressure Treated Lumber
Fiberglass Roof Shingle (25 year)
Exterior Sidling – vinyl w/aluminum fascia and vented soffit (white trim)
Shutters – Front of house only
Windows – vinyl thermopane or equivalent
Gutters and Leaders – Aluminum, white
Exterior Doors – Insulated Metal
Garage Door – Insulated Metal
Attic – Scuttle Opening

Plumbing & Heating:
Kitchen Sink – Stainless steel (single bowl)
Vanity Sinks – 19" Round china w/single handle faucet
Tub w/Shower – One piece molded fiberglass
Exterior front and rear faucets
Oil Furnace or Gas (if applicable)
Washer and Dryer hook-ups
Copper water lines w/PVC (waste draining)

Insulation:
Insulation as per building code
Exterior Walls – R13
Ceiling – R38
Basement Ceiling – R11

Cabinets:
Kitchen Cabinets – and countertops
Bathroom Vanities – and countertops

Flooring:
Carpet

Tile
Vinyl

Interior Finish:
Trim – colonial
Doors – Six Panel Colonial
Painting – all areas flat off-white

MODEL AND HOD HOME SIZES

MODEL HOME

3 Bedrooms	1,394 sq. ft.
1.5 Baths	
Living Room	
Dining Room	
Kitchen	
1 Car Garage	

HOD HOME

3 Bedrooms	1,254 sq. ft.
1.5 Baths	
Living Room	
Dining Room	
Kitchen	
1 Car Garage	

SCHEDULE D - DEFINITIONS AND ELEMENTS OF ANNUAL FAMILY INCOME

1. Annual income shall be calculated with reference to 24 C.F.R. § 5.609, and includes, but is not limited to, the following:
   a) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses and other compensation for personal services;
   b) The net income from operations of a business or profession, before any capital expenditures but including any allowance for depreciation expense;
   c) Interest, dividends, and other net income of any kind from real or personal property;
   d) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, or other similar types of periodic payments;
   e) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay;
   f) Welfare assistance. If the welfare assistance payments include an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance to be included as income consists of the following:
      (1) The amount of the allowance exclusive of the amounts designated for shelter or utilities, plus
      (2) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities;
   g) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing with the Applicant (e.g. periodic gifts from family members, churches, or other sponsored group, even if the gifts are designated as rental or other assistance);
   h) All regular pay, special pay and allowances of a member of the armed forces;
   i) Any assets not earning a verifiable income shall have an imputed interest income using a current average annual savings interest rate.

2. Excluded from the definition of family annual income are the following:
   a) Income from employment of children under the age of 18;
   b) Payments received for the care of foster children;

c) Lump-sum additions to family assets, such as inheritances, insurance payments, capital gains and settlement for personal or property losses;
d) Amounts received that are specifically for, or in reimbursement of, the cost of medical expense for any family member;
e) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran in connection with education costs;
f) Amounts received under training programs funded by HUD;
g) Food stamps; and
h) Temporary, nonrecurring or sporadic income (including gifts that are not regular or periodic).

3. Net family assets for purposes of imputing annual income include the following:
   a) Cash held in savings and checking accounts, safety deposit boxes, etc.;
   b) The current market value of a trust for which any household member has an interest;
   c) The current market value, less any outstanding loan balances of any rental property or other capital investment;
   d) The current market value of all stocks, bonds, treasury bills, certificates of deposit and money market funds;
   e) The current value of any individual retirement, 401K or Keogh account;
   f) The cash value of a retirement or pension fund which the family member can withdraw without terminating employment or retiring;
   g) Any lump-sum receipts not otherwise included in income (i.e., inheritances, capital gains, one-time lottery winnings, and settlement on insurance claims);
   h) The current market value of any personal property held for investment (i.e., gems, jewelry, coin collections); and
   i) Assets disposed of within two (2) years before the Application Date, but only to the extent consideration received was less than the fair market value of the asset at the time it was sold.
4. Net family assets do not include the following:
   a) Necessary personal property (clothing, furniture, cars, etc.);
   b) Vehicles equipped for handicapped individuals;
   c) Life insurance policies;
   d) Assets which are part of an active business, not including rental properties; and
   e) Assets that are not accessible to the Applicant and provide no income to the Applicant.

SCHEDULE E - DOCUMENTATION OF INCOME

The following documents shall be provided, where applicable, to the Administrator to determine income eligibility:

1. Employment Income
   Verification forms must request the employer to specify the frequency of pay, the effective date of the last pay increase, and the probability and effective date of any increase during the next twelve (12) months. Acceptable forms of verification (of which at least one must be included in the Applicant file) include:
   a) An employment verification form completed by the employer.
   b) Check stubs or earnings statement showing Applicant's gross pay per pay period and frequency of pay.
   c) W-2 forms if the Applicant has had the same job for at least two years and pay increases can be accurately projected.
   d) Notarized statements, affidavits or income tax returns signed by the Applicant describing self-employment and amount of income, or income from tips and other gratuities.
2. Social Security, Pensions, Supplementary Security Income, Disability Income
   a) Benefit verification form completed by agency providing the benefits.
   b) Award or benefit notification letters prepared and signed by the authorizing agency. (Since checks or bank deposit slips show only net amounts remaining after deducting SSI or Medicare, they may be used only when award letter cannot be obtained.)
   c) If a local Social Security Administration (SSA) office refuses to provide written verification, the Administrator should meet with the SSA office supervisor. If the supervisor refuses to complete the verification forms in a timely manner, the Administrator may accept a check or automatic deposit slip as interim verification of Social Security or SSI benefits as long as any Medicare or state health insurance withholdings are included in the annual income.
3. Unemployment Compensation
   a) Verification form completed by the unemployment compensation agency.
   b) Records from unemployment office stating payment dates and amounts.

4. Government Assistance
    a) All Government Assistance Programs. Agency's written statements as to type and amount of assistance Applicant is now receiving, and any changes in assistance expected during the next twelve (12) months.
    b) Additional Information for "As-paid" Programs: Agency's written schedule or statement that describes how the "as-paid" system works, the maximum amount the Applicant may receive for shelter and utilities and, if applicable, any factors used to ratably reduce the Applicant's grant.
5. Alimony or Child Support Payments
    a) Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules.
    b) A letter from the person paying the support.
    c) Copy of latest check. The date, amount, and number of the check must be documented.
    d) Applicant's notarized statement or affidavit of amount received or that support payments are not being received and the likelihood of support payments being received in the future.
6. Net Income from a Business

    The following documents show income for the prior years. The Administrator must consult with Applicant and use this data to estimate income for the next twelve (12) months.
    a) IRS Tax Return, Form 1040, including any:
        (1) Schedule C (Small Business)
        (2) Schedule E (Rental Property Income)
        (3) Schedule F (Farm Income)
    b) An accountant's calculation of depreciation expense, computed using straight-line depreciation rules. (Required when accelerated depreciation was used on the tax return or financial statement.)
    c) Audited or unaudited financial statement(s) of the business.
    d) A copy of a recent loan application listing income derived from the business during the previous twelve (12) months.
    e) Applicant's notarized statement or affidavit as to net income realized from the business during previous years.

7. Recurring Gifts
    a) Notarized statement or affidavit signed by the person providing the assistance. Must give the purpose, dates and value of gifts.
    b) Applicant's notarized statement or affidavit that provides the information above.
8. Scholarships, Grants, and Veterans Administration Benefits for Education
    a) Benefactor's written confirmation of amount of assistance, and educational institution's written confirmation of expected cost of the student's tuition, fees, books and equipment for the next twelve (12) months. To the extent the amount of assistance received is less than or equal to actual educational costs, the assistance payments will be excluded from the Applicant's gross income. Any excess will be included in income.
    b) Copies of latest benefit checks, if benefits are paid directly to student. Copies of canceled checks or receipts for tuition, fees, books, and equipment, if such income and expenses are not expected to changed for the next twelve (12) months.
    c) Lease and receipts or bills for rent and utility costs paid by students living away from home.
9. Family Assets Currently Held

    For non-liquid assets, collect enough information to determine the current cash value (i.e., the net amount the Applicant would receive if the asset were converted to cash).
    a) Verification forms, letters, or documents from a financial institution, broker, etc.
    b) Passbooks, checking account statements, certificates of deposit, bonds, or financial statements completed by a financial institution or broker.
    c) Quotes from a stock broker or realty agent as to net amount Applicant would receive if Applicant liquidated securities or real estate.
    d) Real estate tax statements if tax authority uses approximate market value.
    e) Copies of closing documents showing the selling price, the distribution of the sales proceeds and the net amount to the borrower.
    f) Appraisals of personal property held as a investment.
    g) Applicant's notarized statements or signed affidavits describing assets or verifying the amount of cash held at the Applicant's home or in safe deposit boxes.

10. Assets Disposed of for Less Than Fair Market Value ("FMV") During Two Years Preceding Application Date
    a) Applicant's certification as to whether it has disposed of assets for less than FMV during the two (2) years preceding the Application Date.
    b) If the Applicant states that it did dispose of assets for less than FMV, then a written statement by the Applicant must include the following:
        (1) A list of all assets disposed of for less than FMV,
        (2) The date Applicant disposed of the assets,
        (3) The amount the Applicant received, and
        (4) The market value to the asset(s) at the time of disposition.
11. Savings Account Interest Income and Dividends
    a) Account statements, passbooks, certificates of deposit, etc., if they show enough information and are signed by the financial institution.
    b) Broker's quarterly statements showing value of stocks or bonds and the earnings credited the Applicant.
    c) If an IRS Form 1099 is accepted from the financial institution for prior year earnings, the Administrator must adjust the information to project earnings expected for the next twelve (12) months.
12. Rental Income from Property Owned by Applicant
    The following, adjusted for changes expected during the next twelve (12) months, may be used:
    a) IRS Form 1040 with Schedule E (Rental Income).
    b) Copies of latest rent checks, leases, or utility bills.
    c) Documentation of Applicant's income and expenses in renting the property (tax statements, insurance premiums, receipts for reasonable maintenance and utilities, bank statements or amortization schedule showing monthly interest expense).
    d) Lessee's written statement identifying monthly payments due the Applicant and Applicant's affidavit as to net income realized.
13. Full-Time Student Status
    a) Written verification from the registrar's office or appropriate school official.
    b) School records indicating enrollment for sufficient number of credits to be considered a full-time student by the school.

SCHEDULE F - DEED RESTRICTIONS

The language below shall be inserted in each deed for a HOD Home for the duration of the fifty (50) year sale price restriction period.

The property conveyed hereby is an “affordable housing” home as defined in Connecticut General Statutes Section 8-30g. Said property is subject to the following restrictions (the "Restrictions"):

TO BE INSERTED IN A DEED FOR A SIXTY PERCENT HOME:

1. The owner of said unit shall sell or transfer said unit (“a lower income home”) only to a family or household whose income is equal to or less than sixty percent (60%) of the lesser of the area median income for the Town of Wallingford ("Town"), or the statewide median as determined by the Connecticut Department of Housing and the U.S. Department of Housing and Urban Development ("HUD"). This designation as a lower income home shall remain in place for the duration of the price restriction period. Determination of a potential purchaser's eligibility shall be made by the Administrator (as defined in that certain Affordability Plan (the “Affordability Plan”) for the Community of which said property is a part, a copy of which site plan is on file in the Town's Planning and Zoning Office).

TO BE INSERTED IN A DEED FOR AN EIGHTY PERCENT HOME:

1. The owner of said unit shall sell or transfer said unit (“a moderate income home”) only to a family or household whose income is greater than sixty percent (60%) but less than or equal to eighty percent (80%) of the lesser of the area median income for the Town of Wallingford ("Town"), or the statewide median as determined by the Connecticut Department of Housing and the U.S. Department of Housing and Urban Development (“HUD”). The designation as a moderate income home shall remain in place for the duration of the price restriction period. Determination of a potential purchaser's eligibility shall be made by the Administrator (as defined in that certain Affordability Plan (the “Affordability Plan”) for the Community of which said property is a part, a copy of which site plan is on file in the Town's Planning and Zoning Office).

TO BE INSERTED IN ALL HOD HOME DEEDS:

2. In the event said owner desires to make said property available for sale, said owner shall notify the Administrator in writing. The owner shall pay the Administrator a fee to cover the cost of administering the sale. The Administrator shall then provide notice of the availability of said property for purchase. Such notice shall be provided, at a minimum, by advertising at least

two times in newspapers of general circulation in the Town. The owner shall bear the cost of such advertisement. The Administrator shall also provide such notice to the Wallingford Planning and Zoning Commission and the Town of Wallingford. Such notice shall include a description of said property, the eligibility criteria for potential purchasers, the Maximum Sale Price and the availability of application forms and additional information. All such notices shall comply with the Federal Fair Housing Act, 42 U.S.C. 3601 et seq. and the Connecticut Fair Housing Act, Conn. Gen. Stat. Sections 46a-64b, 64c. Said owner may hire a real estate broker or otherwise individually solicit offers, independent of the Administrator's action, from potential purchasers. Said owner shall inform any potential purchaser of the affordability restrictions before any purchase and sale agreement is executed by furnishing the potential purchaser with a copy of the Affordability Plan. The purchase and sale agreement shall contain a provision to the effect that the sale is contingent upon a determination by the Administrator that the potential purchaser meets the eligibility criteria set forth in the Affordability Plan. Once the purchase and sale agreement is executed by said owner and the potential purchaser, the potential purchaser shall immediately notify the Administrator in writing. The Administrator shall have thirty (30) days from such notice to determine the eligibility of the potential purchaser in accordance with the application process set forth in the Affordability Plan. The Administrator shall notify said owner and the potential purchaser of its determination of eligibility in writing within said thirty (30) day period. If the Administrator determines that the potential purchaser is not eligible, the purchase and sale agreement shall be void, and said owner may solicit other potential purchasers. If the Administrator determines that the potential purchaser is eligible, the Administrator shall provide the potential purchaser and said owner with a signed certification, executed in recordable form, to the effect that the sale of the particular HOD Home has complied with the provisions of the Affordability Plan. The owner shall bear the cost of recording said certification.

3. Said owner shall occupy said property as said owner's principal residence and shall not lease said property.

4. Said owner shall maintain said property. Said owner shall not destroy, damage or impair said property, allow said property to deteriorate, or commit waste on said property. When said property is offered for re-sale, the Administrator may cause said property to be inspected.

5. A site plan for this community was approved by agencies of the Town based in part on the condition that a defined percentage of the homes in the community would be preserved as affordable homes. The Restrictions are required by law to be strictly enforced.

6. A violation of the Restrictions shall not result in a forfeiture of title, but the Wallingford Planning and Zoning Commission or its designated agent shall otherwise retain all enforcement powers granted by the Connecticut General Statutes, including Section 8-12, which powers include, but are not limited to,

the authority, at any reasonable time, to inspect said property and to examine the books and records of the Administrator to determine compliance of said property with the affordable housing regulations.

295847 v.07 S2

CONNECTICUT CONFERENCE OF MUNICIPALITIES
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Applying the Affordable Housing Land Use Appeals Act: Guidelines for Boards and Commissions[1]

Implicitly, a court reviewing a board or commission decision under the Affordable Housing Land Use Appeals Act is actually making a determination about whether the municipal commission is acting in good faith. Everyone agrees that there are substantial public interests that justify denial under the 8-30g(g)(1)(A)(B) and (C) standards. It is in fact the duty of municipal commissions to protect such public interests. So, what must a municipality do to meet the standards to convince a court that it has reached its decision in good faith? Each case will turn on its specific facts, but a review by CCM's legal counsel of all published decisions since adoption of the original Act, in the Superior Courts, the Appellate Court and the Supreme Court, suggest the following guidelines for boards and commissions making decisions about affordable housing applications:

(1) ***Recognize that there is a hierarchy of public interests that courts accept as deserving of protection.*** Adequate potable water and safe sewage disposal to residents of the proposed development as well as to the community as a whole clearly are at the top. Open space, and preservation of water quality can support denial. Historic preservation, traffic congestion, and traffic and other safety concerns have been considered legitimate public interests.[2] Some of them, however, have only been sufficient to support imposition of restrictions on a development, not denial.

Impact on the school system and on property values are not legitimate public interests to be protected. Clearly, failure to comply with existing density limits or any other existing regulations is an inadequate basis for denial.

Whether a legitimate public interest will be considered a *substantial* public interest appears to depend not only on its place in the hierarchy, but on evidence of the degree of probable harm to that interest from the development.

(2) ***Avoid inconsistency.*** If the town plan and regulations permit uses on the land proposed for an affordable housing development that are similar in impact to a proposed affordable housing development, it is highly unlikely that any court will find that there is a sufficient basis for denial. This is true even if there is evidence that the impacts are harmful to public health and safety or other legitimate public interests. Similarly, if a commission has previously approved a development, whether commercial, affordable or non-affordable, that generates the same or greater impact on a legitimate public interest as the

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[1] The guidelines are informational only and are not intended as legal advice. CCM strongly advises boards and commissions to work closely with their municipal attorneys in reviewing affordable housing applications. Additional materials on the Act are available from CCM.

[2] This is not intended to be an exhaustive list of legitimate public interests. Other public interests may be recognized based on public policies embodied in other statutes.

proposed affordable housing development, courts will consider concern about that impact to be an excuse, not a legitimate basis for denial.

(3) ***Have evidence in the record of commitment to protecting the public interest claimed to be harmed.*** That commitment should be reflected in the plan of conservation and development, in regulations, and in past actions. For example, in *Christian Activities Council*, the town had long designated the parcel in question as desirable open space and had sought to acquire it.

(4) ***Get expert assistance and put supporting documentation in the record.*** Any supporting documentation for the town's plan of conservation and development and implementing regulations that is relevant to the application can be the starting point for evaluation of an application by professional staff and consultants, and should be placed in the record. If the application raises concerns about whether it should be approved,[3] staff and consultants, and, as relevant, other State and local agencies and affected municipal officials, should be asked to evaluate the extent and nature of any health or safety concern or the impact on other public interests. They also should be asked how the concern can be addressed by modifying the proposed development. Their reports and testimony pertaining to the specific application are the foundation of a good evidentiary record.

(5) ***Be open to and carefully consider alternatives that might protect the public interest.*** Bases for denial that are plan specific, as opposed to site specific, trigger subpart (1)(C) and an inquiry whether the substantial public interests can be addressed by reasonable changes in the development rather than a denial. For example, traffic safety or the safety of children in a development are clearly legitimate public concerns, but, pursuant to subsection (C), reviewing courts tend to find that reasonable alternatives to deal with the problems could be imposed on the project as a condition of approval, such as fencing, traffic controls, and local road improvements. Please note, however, that compliance with minimal safety standards, not optimal standards, is all that can be required. Note, as well, that *required* approvals from other agencies, such as a Water Pollution Control Authority, may be made a condition of approval.

(6) ***Have evidence in the record of the municipality's recognition of the need for affordable housing and of efforts to meet that need.*** Where the harm to substantial public interests is overwhelming -- for example, if no potable water supply can be supplied to the proposed development -- such evidence may not be necessary to meet the balancing test of subpart (1)(B). However, *Christian Activities Council* suggests that a court may be more likely to uphold a determination that a substantial public interest outweighs the need for affordable housing if the municipality does not deny the need and has taken steps to meet it. Such evidence would be part of a commission's actual consideration of the balancing required by (1)(B) and of its explanation of why it reached the conclusion that a substantial public interest outweighs the need for affordable housing. *Christian Activities Council* made it clear that a conclusionary statement that it does will not suffice.

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[3] Public Act 00-206 amended the Affordable Housing Appeals Act to permit a commission to adopt a regulation requiring an affordable housing applicant to provide a conceptual site plan in connection with an affordable housing application requesting a zone change. This may be a sufficient basis for a commission to decide that the application presents no concerns and should be approved, making expert testimony and consultation unnecessary.

Supplementary Materials –

Fair Housing

*36272

West's Connecticut General Statutes Unannotated
TITLE 46A. HUMAN RIGHTS
CHAPTER 814C. HUMAN RIGHTS AND OPPORTUNITIES
PART II. DISCRIMINATORY PRACTICES

Current through 2004 Feb. Reg. Sess. and May Sp. Sess.

§ 46a-64c. Discriminatory housing practices prohibited. Disposition of complaints. Penalty

(a) It shall be a discriminatory practice in violation of this section:

(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income or familial status.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income or familial status.

(3) To make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, familial status, learning disability or physical or mental disability, or an intention to make any such preference, limitation or discrimination.

(4) (A) To represent to any person because of race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, familial status, learning disability or physical or mental disability that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

(B) It shall be a violation of this subdivision for any person to restrict or attempt to restrict the choices of any buyer or renter to purchase or rent a dwelling (i) to an area which is substantially populated, even if less than a majority, by persons of the same protected class as the buyer or renter, (ii) while such person is authorized to offer for sale or rent another dwelling which meets the housing criteria as expressed by the buyer or renter to such person and (iii) such other dwelling is in an area which is not substantially populated by persons of the same protected class as the buyer or renter. As used in this subdivision, "area" means municipality, neighborhood or other geographic subdivision which may include an apartment or condominium complex; and "protected class" means race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, familial status, learning disability or physical or mental disability.

*36273 (5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, familial status, learning disability or physical or mental disability.

(6) (A) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a learning disability or physical or mental disability of: (i) Such buyer or renter; (ii) a person residing in or intending to reside in such dwelling after it is so sold, rented, or made available; or (iii) any person associated with such buyer or renter.

(B) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a learning disability or physical or mental disability of: (i) Such person; or (ii) a person residing in or intending to reside in such dwelling after it is so sold, rented, or made available; or (iii) any person associated with such person.

(C) For purposes of this subdivision, discrimination includes: (i) A refusal to permit, at the expense of a person with a physical or mental disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; (iii) in connection with the design and construction of covered multifamily dwellings for the first occupancy after March 13, 1991, a failure to design and construct those dwellings in such manner that they comply with the requirements of Section 804(f) of the Fair Housing Act [FN1] or the provisions of the State Building Code [FN2] as adopted pursuant to the provisions of sections 29-269 and 29-273, whichever requires greater accommodation. "Covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators, and ground floor units in other buildings consisting of four or more units.

***36274** (7) For any person or other entity engaging in residential real-estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, familial status, learning disability or physical or mental disability.

(8) To deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership or participation, on account of race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, familial status, learning disability or physical or mental disability.

(9) To coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section.

(b) (1) The provisions of this section shall not apply to (A) the rental of a room or rooms in a single-family dwelling unit if the owner actually maintains and occupies part of such living quarters as his residence or (B) a unit in a dwelling containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies the other such living quarters as his residence. (2) The provisions of this section with respect to the prohibition of discrimination on the basis of marital status shall not be construed to prohibit the denial of a dwelling to a man or a woman who are both unrelated by blood and not married to each other. (3) The provisions of this section with respect to the prohibition of discrimination on the basis of age shall not apply to minors, to special discount or other public or private programs to assist persons sixty years of age and older or to housing for older persons as defined in section 46a-64b, provided there is no discrimination on the basis of age among older

persons eligible for such housing. (4) The provisions of this section with respect to the prohibition of discrimination on the basis of familial status shall not apply to housing for older persons as defined in section 46a-64b or to a unit in a dwelling containing units for no more than four families living independently of each other, if the owner of such dwelling resides in one of the units. (5) The provisions of this section with respect to the prohibition of discrimination on the basis of lawful source of income shall not prohibit the denial of full and equal accommodations solely on the basis of insufficient income. (6) The provisions of this section with respect to the prohibition of discrimination on the basis of sex shall not apply to the rental of sleeping accommodations to the extent they utilize shared bathroom facilities when such sleeping accommodations are provided by associations and organizations which rent such sleeping accommodations on a temporary or permanent basis for the exclusive use of persons of the same sex based on considerations of privacy and modesty.

*36275 (c) Nothing in this section limits the applicability of any reasonable state statute or municipal ordinance restricting the maximum number of persons permitted to occupy a dwelling.

(d) Nothing in this section or section 46a-64b shall be construed to invalidate or limit any state statute or municipal ordinance that requires dwellings to be designed and constructed in a manner that affords persons with physical or mental disabilities greater access than is required by this section or section 46a-64b.

(e) Nothing in this section prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, familial status, learning disability or physical or mental disability.

(f) Notwithstanding any other provision of this chapter, complaints alleging a violation of this section shall be investigated within one hundred days of filing and a final administrative disposition shall be made within one year of filing unless it is impracticable to do so. If the Commission on Human Rights and Opportunities is unable to complete its investigation or make a final administrative determination within such time frames, it shall notify the complainant and the respondent in writing of the reasons for not doing so.

(g) Any person who violates any provision of this section shall be fined not less than twenty-five nor more than one hundred dollars or imprisoned not more than thirty days, or both.

CREDIT(S)

(1990, P.A. 90-246, § 5; 1991, P.A. 91-407, § 1, eff. July 2, 1991; 1992, P.A. 92-257, § 2.)

[FN1] 42 U.S.C.A. § 3604 et seq.

[FN2] Regs. Conn. State Agencies, § 29-252-1b.

*137911 42 U.S.C.A. § 3602

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 45--FAIR HOUSING
SUBCHAPTER I--GENERALLY

Current through P.L. 108-279 approved 7-22-04

§ 3602. Definitions

As used in this subchapter--

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Handicap" means, with respect to a person--

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

*137912 (3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).

(i) "Aggrieved person" includes any person who--

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

(j) "Complainant" means the person (including the Secretary) who files a complaint under section 3610 of this title.

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with--

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(l) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

(m) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(n) "Respondent" means--

(1) the person or other entity accused in a complaint of an unfair housing practice; and

(2) any other person or entity identified in the course of investigation and notified as

required with respect to respondents so identified under section 3610(a) of this title.

***137913** (o) "Prevailing party" has the same meaning as such term has in section 1988 of this title.

CREDIT(S)

(Pub.L. 90-284, Title VIII, § 802, Apr. 11, 1968, 82 Stat. 81; Pub.L. 95-598, Title III, § 331, Nov. 6, 1978, 92 Stat. 2679; Pub.L. 100-430, § 5, Sept. 13, 1988, 102 Stat. 1619.)

***137938 42 U.S.C.A. § 3604**

UNITED STATES CODE ANNOTATED TITLE 42. THE PUBLIC HEALTH AND WELFARE CHAPTER 45--FAIR HOUSING SUBCHAPTER I-- GENERALLY

Current through P.L. 108-279 approved 7-22-04

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful--

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

***137939** (A) that buyer or renter, [FN1]

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes--

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. [FN2]

(B) a refusal to make reasonable accommodations in rules, policies,

practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that--

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

***137940** (iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

***137941** (B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term "covered multifamily dwellings" means--

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires

that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

CREDIT(S)

(Pub.L. 90-284, Title VIII, § 804, Apr. 11, 1968, 82 Stat. 83; Pub.L. 93-383, Title VIII, § 808(b)(1), Aug. 22, 1974, 88 Stat. 729; Pub.L. 100-430, §§ 6(a)-(b)(2), (e), 15, Sept. 13, 1988, 102 Stat. 1620, 1622, 1623, 1636.)

[FN1] So in original. The comma probably should be a semicolon.

[FN2] So in original. The period probably should be a semicolon.

*138112 42 U.S.C.A. § 3607

UNITED STATES CODE ANNOTATED TITLE 42. THE PUBLIC HEALTH AND WELFARE CHAPTER 45--FAIR HOUSING SUBCHAPTER I--GENERALLY

Current through P.L. 108-279 approved 7-22-04

§ 3607. Religious organization or private club exemption

(a) Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b)(1) Nothing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons.

(2) As used in this section, "housing for older persons" means housing--

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by persons 55 years of age or older, and--

(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

*138113 (ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall--

(I) provide for verification by reliable surveys and affidavits; and

(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of September 13, 1988, who do not meet the age requirements of subsections [FN1] (2)(B) or (C): Provided, That new occupants of such housing meet the age requirements of subsections [FN1] (2)(B) or (C); or

(B) unoccupied units: Provided, That such units are reserved for occupancy by persons who meet the age requirements of subsections [FN1] (2)(B) or (C).

(4) Nothing in this subchapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 802 of Title 21.

(5)(A) A person shall not be held personally

liable for monetary damages for a violation of this subchapter if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

(B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that--

(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and

(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption. ***138114**

CREDIT(S)

(Pub.L. 90-284, Title VIII, § 807, Apr. 11, 1968, 82 Stat. 84; Pub.L. 100-430, § 6(d), Sept. 13, 1988, 102 Stat. 1622; Pub.L. 104-76, §§ 2, 3, Dec. 28, 1995, 109 Stat. 787.)

[FN1] So in original. Probably should be "paragraph".

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TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER I--OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URB

PART 100--DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT--Table of Contents

Subpart E--Housing for Older Persons

Sec. 100.**301** Exemption.

(a) The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of Secs. 100.302, 100.303 or Sec. 100.304.

(b) Nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

[Code of Federal Regulations]
[Title 24, Volume 1, Parts 0 to 199]
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TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER I--OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URB

PART 100--DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT--Table of Contents

Subpart E--Housing for Older Persons

Sec. 100.**303** 62 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

(1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over;

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(b) The following examples illustrate the application of paragraph (a) of this section:

Example (1): John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its ``62 or over'' exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the ``55 or over'' exemption in Sec. 100.304.

Example (2): The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the ``62 or over'' exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the ``62 or over'' exemption.

[Code of Federal Regulations]
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TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER I--OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 100_DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT--Table of Contents

Subpart E_Housing for Older Persons

Sec. 100.**305** 80 percent occupancy.

(a) In order for a housing facility or community to qualify as housing for older persons under Sec. 100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.

(b) For purposes of this subpart, occupied unit means:

(1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or

(2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this subpart, occupied by at least one person 55 years of age or older means that on the date the exemption for housing designed for persons who are 55 years of age or older is claimed:

(1) At least one occupant of the dwelling unit is 55 years of age or older; or

(2) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.

(d) Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes a facility or community that has been wholly unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by Sec. 100.204 and who are under the age of 55.

(5) For a period expiring one year from the effective date of this final

regulation, there are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the

time the exemption is asserted:

(i) Has reserved all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(ii) Meets the requirements of Sec. Sec. 100.304, 100.306, and 100.307.

(f) For purposes of the transition provision described in Sec. 100.**305**(e)(5), a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.

(g) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

(h) Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person 55 years of age or older, so long as the housing facility or community complies with the provisions of Sec. 100.306.

[64 FR 16329, Apr. 2, 1999]

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TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER I--OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 100_DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT--Table of Contents

Subpart E_Housing for Older Persons

Sec. 100.**306** Intent to operate as housing designed for persons who are 55 years of age or older.

(a) In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

(1) The manner in which the housing facility or community is described to prospective residents;

(2) Any advertising designed to attract prospective residents;

(3) Lease provisions;

(4) Written rules, regulations, covenants, deed or other restrictions;

(5) The maintenance and consistent application of relevant procedures;

(6) Actual practices of the housing facility or community; and

(7) Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

(b) Phrases such as ``adult living'', ``adult community'', or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons 55 years of age or older.

(c) If there is language in deed or other community or facility documents which is inconsistent with the intent to provide housing for persons who are 55 years of age or older housing, HUD shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.

(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of Sec. Sec. 100.305 and 100.**306**(a).

(Approved by the Office of Management and Budget under control number 2529-0046)

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TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER I--OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 100_DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT--Table of Contents

Subpart E_Housing for Older Persons

Sec. 100.**307** Verification of occupancy.

(a) In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with Sec. 100.305 through reliable surveys and affidavits.

(b) A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in paragraph (b) of this section must provide for regular updates, through surveys or

other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years. A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of Sec. 100.305.

(d) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

(1) Driver's license;

(2) Birth certificate;

(3) Passport;

(4) Immigration card;

(5) Military identification;

(6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or

(7) A certification in a lease, application, affidavit, or other document signed by any member of the household age 18 or older asserting that at least one person in the unit is 55 years of age or older.

(e) A facility or community shall consider any one of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.

(f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(g) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include:

(1) Government records or documents, such as a local household census;

(2) Prior forms or applications; or

(3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(h) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(i) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

(Approved by the Office of Management and Budget under control number 2529-0046)

[64 FR 16330, Apr. 2, 1999]

Supplementary Materials –

Religious Land Uses

WE ALL GOTTA GET RELIGION: A PRIMER ON RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000

By Amy E. Souchuns[1]

How much more work could a few quiet houses of worship cause? After all, local land use agencies have cutting edge issues to worry about, things like telecommunication towers, sprawl, vocal NIMBY's, open space, GIS systems, and affordable housing, right? Well, make room for churches, temples, and mosques: the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) became law in September 2000. Designed to protect religious exercise, this act is a very broad statute that gives virtually every religiously-affiliated land use applicant a unique advantage when dealing with local land use regulation.

This article provides an overview of legal background that led to the passage of RLUIPA and its predecessor statute. It highlights key provisions of the new act and provides some preliminary guidance for planners and commissioners when land use applicants are religious organizations.

BACKGROUND: CONGRESS TAKES ON THE SUPREME COURT

Prior to 1990, the United States Supreme Court had held that the free exercise of religion clause in the First Amendment to the federal Constitution required exceptions to "generally applicable" laws and policies for religious adherents. A

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generally applicable law is one that makes no distinctions among people and applies to everyone equally. For example, a state law might require all children to attend school until they reach a certain age. That state could not, however, force Amish parents to send their children to school beyond eighth grade in conflict with their Amish religious principles. In order for a state to prevail in a situation such as this, it would need to show that its interest is compelling and outweighs the individual's constitutionally-protected right to practice his or her religion without interference from the state. The courts call this test "strict scrutiny." If the state fails to show its interest is compelling, the individual wins and an exception to the generally applicable law is created.

The Supreme Court's decision in Employment Division v. Smith, 494 U.S. 872 (1990), modified this long-held rule. Smith involved an Oregon resident discharged from his job for using peyote, a controlled narcotic, as part of his Native American religion. When he applied for unemployment, Oregon's agency denied him on the grounds that he was fired for "misconduct" and was therefore ineligible for benefits under Oregon law. The Supreme Court took a narrow approach in upholding Oregon's position, stating that so long as a generally applicable law was neutrally applied, there was no First Amendment violation, even if religious persons or institutions were affected, as Smith was.

Congress reacted to this decision, which appeared to make it much easier for governments to restrict the activities of religious groups, by passing the Religious Freedom Restoration Act (RFRA) in 1993, in order to re-establish the strict scrutiny test in religious exercise cases. RFRA mandated that the government could only

burden a person's exercise of religion if it had a "compelling governmental interest." Additionally, the burden had to be the "least restrictive means" that the government could use to meet that goal.

Around the same time, Connecticut's legislature passed an act very similar to RFRA, but with key differences. Unlike the federal act, Connecticut's act, Conn. Gen. Stat. § 52-571b, prohibits any governmental burden on religious exercise, with no clear exceptions for compelling interests. The Connecticut act applies to all government action, not just land use. However, the Connecticut courts have not yet decided any case that interpret "burden."

Immediately, religious organizations began to use RFRA in local land use. In 1997, however, the Supreme Court struck RFRA down as unconstitutional as applied to state and local governments in City of Boerne v. Flores, 521 U.S. 507. At issue in City of Boerne was the ability of a Catholic Church located in Boerne's historic district to enlarge its building. A city ordinance required pre-approval of any construction in the historic district. The historic landmark commission denied the church's application to expand and the church filed suit, claiming that the ordinance violated RFRA. The Supreme Court determined that Congress had overstepped its authority and found RFRA unconstitutional when applied to state or local governments. After an unsuccessful attempt in 1999, the Congress passed RLUIPA last year, attempting again to restore the pre-Smith strict scrutiny standard.

WHAT DOES RLUIPA REQUIRE?

RLUIPA re-establishes RFRA's "compelling governmental interest" and "least restrictive means" standards for state and local governments. It contains a lengthy legal description of the situations to which it applies. In summary, RLUIPA applies to any land use decision in which formal or informal procedures are employed to make a case-by-case decision on a proposed use of property that implicates the practice of religion.

RLUIPA's definitions are key to understanding the impact of this legislation:

Religious exercise: "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." Religious exercise also includes "the use, building or conversion of real property for the purpose of religious exercise."

Land use regulation: "a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest."

RLUIPA prohibits any government agency from imposing

> **a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly or institution (A) is in furtherance of a compelling government interest; and (B) is the least restrictive means of furthering that compelling government interest.**

42 U.S.C. § 2000cc(a)(1). RLUIPA also prohibits the government from treating a religious assembly or institution on "less than equal terms" than a non-religious assembly, from completely excluding religious assemblies in a jurisdiction, or from

placing unreasonable limits on the religious assemblies, institutions or structures within a jurisdiction. Unquestionably, these broad definitions and prohibitions will impact how local land use decisions are made when a religious applicant is involved.

NATIONAL INTEREST GROUPS AND LITIGATION

The organizations that were opposed to RLUIPA's passage are still concerned with its broad reach. The National League of Cities, National Association of Counties, National Trust for Historic Preservation and the American Planning Association were among the organizations that sought to defeat it. These organizations deem RLUIPA unconstitutional and another unjustifiable exercise of power by Congress, just as RFRA was.

Litigation has already begun under RLUIPA. Religious organizations in Michigan, California and Illinois have already begun to file cases under its provisions. Claims have been made by a Catholic primary school and daycare, an Orthodox Jewish congregation in a residential neighborhood, and several churches in Chicago unable to locate available space in permitted zones.

THE LOCAL IMPLICATIONS

What does this act mean for Connecticut planners and commissions? Most importantly, planners and commissioners must realize that this act covers much more than churches, synagogues, mosques and other houses of worship. The broad definition of religious exercise creates a scenario in which not only a religious school but also a day care facility, gym, or senior citizen center falls within the scope of the

act. Therefore, local officials should be alert that any land use application by a religious organization could trigger RLUIPA's protection.

Next are the prohibitions on imposing a "substantial burden" and treating religious organization on less than equal terms. It would appear that the normal test of local land use regulation, i.e. that it furthers health, safety, and welfare, will be supplanted if local land use regulation or action may substantially burden religious exercise. Put another way, it seems clear that arguing that a local land use agency is merely subjecting a religious organization to a neutral and generally applicable zoning regulation will not validate local action. RLUIPA's requirements may turn out to be similar to the "reasonable accommodation" requirement in federal fair housing laws that protects certain groups when they seek housing.

RLUIPA does not contain specific provisions that expressly address occupancy, building code or health standards. The broad language used ("zoning or landmarking law") could be interpreted narrowly to exclude these types of regulations, but a court could also consider a broad interpretation that would encompass any regulation applied to religiously affiliated applications. Commissions should act cautiously until this issue is clarified, supporting each decision with clear statements about the government interest served by the regulation or ordinance.

It is not only zoning commissions that must be cautious. Although the definition of "land use regulation" uses the word "zoning," a broad interpretation of the term could apply RLUIPA's prohibitions to any agency involved in land use, including planning, inland wetlands, conservation, architectural and historic preservation

commissions. At the very least, planners and commissioners must realize that RLUIPA expressly prohibits the exclusion of religious assemblies or unreasonable limitations on them within their town's borders.

What also remains to be fleshed out by the courts is the relationship of Connecticut's statute to the federal law. Connecticut may not provide less protection of religious exercise than federal law, but it may provide more. Connecticut's statute seems to offer even greater protection than RLUIPA, but the Connecticut courts have not yet defined what constitutes a "burden" on religious exercise. The only case to reach the courts under Connecticut's law did not involve any exercise of religion. RLUIPA specifically provides that it does not preempt more protective state laws. Because religious organizations are more in tune to their rights because of RLUIPA, they may explore state remedies that may have been ignored previously.

TRACKING DEVELOPMENTS

The Internet is a bountiful source of information on RLUIPA. Websites of local governments organization include the National Association of Counties (www.naco.org) and Congressional Quarterly (www.governing.com). You can also try the American Civil Liberties Union's website at www.aclu.org. In-depth assistance with pending or potential RLUIPA claims is offered by a coalition of government-sponsored organizations. The International Municipal Lawyers Association has teamed up with the National League of Cities and the National Association of Counties to track RLUIPA lawsuits nationwide and to offer assistance to cities and towns facing RLUIPA claims. Information is available at www.imla.org.

*134137 42 U.S.C.A. § 2000cc

UNITED STATES CODE ANNOTATED TITLE 42. THE PUBLIC HEALTH AND WELFARE CHAPTER 21C-- PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

Current through P.L. 108-279 approved 7-22-04

§ 2000cc. Protection of land use as religious exercise

(a) Substantial burdens

(1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application

This subsection applies in any case in which--

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) Equal terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

*134138 (3) Exclusions and limits

No government shall impose or implement a land use regulation that--

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

CREDIT(S)

(Pub.L. 106-274, § 2, Sept. 22, 2000, 114 Stat. 803.)

*134150 42 U.S.C.A. § 2000cc-1

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21C– PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

Current through P.L. 108-279 approved 7-22-04

§ 2000cc-1. Protection of religious exercise of institutionalized persons

(a) General rule

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) Scope of application

This section applies in any case in which--

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

CREDIT(S)

(Pub.L. 106-274, § 3, Sept. 22, 2000, 114 Stat. 804.)

*134156 42 U.S.C.A. § 2000cc-2

UNITED STATES CODE ANNOTATED TITLE 42. THE PUBLIC HEALTH AND WELFARE CHAPTER 21C-- PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

Current through P.L. 108-279 approved 7-22-04

§ 2000cc-2. Judicial relief

(a) Cause of action

A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under Article III of the Constitution.

(b) Burden of persuasion

If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) Full faith and credit

Adjudication of a claim of a violation of section 2000cc of this title in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) Omitted

(e) Prisoners

Nothing in this chapter shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) Authority of United States to enforce this chapter

The United States may bring an action for injunctive or declaratory relief to enforce compliance with this chapter. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) Limitation

*134157 If the only jurisdictional basis for applying a provision of this chapter is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

CREDIT(S)

(Pub.L. 106-274, § 4, Sept. 22, 2000, 114 Stat. 804.)

*134164 42 U.S.C.A. § 2000cc-4

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21C-- PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

Current through P.L. 108-279 approved 7-22-04

§ 2000cc-4. Establishment Clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. In this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

CREDIT(S)

(Pub.L. 106-274, § 6, Sept. 22, 2000, 114 Stat. 806.)

*134165 42 U.S.C.A. § 2000cc-5

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21C-- PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

Current through P.L. 108-279 approved 7-22-04

§ 2000cc-5. Definitions

In this chapter:

(1) Claimant

The term "claimant" means a person raising a claim or defense under this chapter.

(2) Demonstrates

The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

(3) Free Exercise Clause

The term "Free Exercise Clause " means that portion of the First Amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government

The term "government"--

(A) means--

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 2000cc-2(b) and 2000cc-3 of this title, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) Land use regulation

The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity

The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d-4a of this title.

*134166 (7) Religious exercise

(A) In general

The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) Rule

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

CREDIT(S)

(Pub.L. 106-274, § 8, Sept. 22, 2000, 114 Stat. 806.)

*39453

West's Connecticut General Statutes Unannotated
TITLE 52. CIVIL ACTIONS
CHAPTER 925. STATUTORY RIGHTS OF ACTION AND DEFENSES

Current through 2004 Feb. Reg. Sess. and May Sp. Sess.

§ 52-571b. Action or defense authorized when state or political subdivision burdens a person's exercise of religion

(a) The state or any political subdivision of the state shall not burden a person's exercise of religion under section 3 of article first of the constitution of the state even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) The state or any political subdivision of the state may burden a person's exercise of religion only if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest, and (2) is the least restrictive means of furthering that compelling governmental interest.

(c) A person whose exercise of religion has been burdened in violation of the provisions of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the state or any political subdivision of the state.

(d) Nothing in this section shall be construed to authorize the state or any political subdivision of the state to burden any religious belief.

(e) Nothing in this section shall be construed to affect, interpret or in any way address that portion of article seventh of the constitution of the state that prohibits any law giving a preference to any religious society or denomination in the state. The granting of government funding, benefits or exemptions, to the extent permissible under the constitution of the state, shall not constitute a violation of this section. As used in this subsection, the term "granting" does not include the denial of government funding, benefits or exemptions.

(f) For the purposes of this section, "state or any political subdivision of the state" includes any agency, board, commission, department, officer or employee of the state or any political subdivision of the state, and "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

CREDIT(S)

(1993, P.A. 93-252.)

SUMMONS - CIVIL

(Except Family Actions)

JD-CV-1 Rev. 1-2000
C.G.S. § 52-346, 51-347, 51-349, 51-350, 52-45a, 52-48, 52-259, P.B. Secs 3-1 thru 3-21, 8-1

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.state.ct.us

INSTRUCTIONS

1. *Type or print legibly; sign original summons and conform all copies of the summons.*
2. *Prepare or photocopy conformed summons for each defendant.*
3. *Attach the original summons to the original complaint, and attach a copy of the summons to each complaint. Also, if there are more than 2 plaintiffs or 4 defendants prepare form JD-CV-2 and attach it to the original complaint.*
4. *After service has been made by a proper officer, file original papers and officer's return with the clerk of court.*
5. *The party recognized to pay costs must appear personally before the authority taking the recognizance.*
6. *Do not use this form for actions in which an attachment, garnishment or replevy is being sought. See Practice Book Section 8-1 for other exceptions.*

"X" ONE OF THE FOLLOWING:
Amount, legal interest or property in demand, exclusive of interest and costs is:
- ☐ less than $2,500
- ☐ $2,500 through $14,999.99
- ☒ $15,000 or more

("X" if applicable)
- ☐ *Claiming other relief in addition to or in lieu of money or damages.*

TO: Any proper officer; BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to make due and legal service of this Summons and attached Complaint.

RETURN DATE (Mo., day, yr.) (Must be a Tuesday): 9/3/02

☒ JUDICIAL DISTRICT ☐ HOUSING SESSION ☐ G.A. NO. ____

AT (Town in which writ is returnable) (C.G.S. 51-346, 51-349): Danbury

CASE TYPE (See JD-CV-1c): Major A Minor 00

ADDRESS OF COURT CLERK WHERE WRIT AND OTHER PAPERS SHALL BE FILED (No., street, town and zip code) (C.G.S. 51-346, 51-350): 146 White Street, Danbury 06810

TELEPHONE NO. (w/area code): 203-207-8600

PARTIES	NAME AND ADDRESS OF EACH PARTY (No., street, town and zip code) *NOTE: Individuals' Names: Last, First, Middle Initial*	☐ Form JD-CV-2 attached	PTY NO.
FIRST NAMED PLAINTIFF	St. Mary's Parish Corporation a/k/a St. Mary's Parish, 55 Catoonah St., Ridgefield, CT 06877		01
Additional Plaintiff			02
FIRST NAMED DEFENDANT	Town of Ridgefield Planning & Zoning Commission, Town Hall, 400 Main Street, Ridgefield, CT 06877		50
Additional Defendant			51
Additional Defendant			52
Additional Defendant			53

NOTICE TO EACH DEFENDANT

1. YOU ARE BEING SUED.
2. This paper is a Summons in a lawsuit.
3. The Complaint attached to these papers states the claims that each Plaintiff is making against you in this lawsuit.
4. To respond to this Summons, or to be informed of further proceedings, you or your attorney must file a form called an "Appearance" with the Clerk of the above-named Court at the above Court address on or before the second day after the above Return Date.
5. If you or your attorney do not file a written "Appearance" form on time, a judgment may be entered against you by default.
6. The "Appearance" form may be obtained at the above Court address.
7. If you believe that you have insurance that may cover the claim that is being made against you in this lawsuit, you should immediately take the Summons and Complaint to your insurance representative.
8. If you have questions about the Summons and Complaint, you should consult an attorney promptly. **The Clerk of Court is not permitted to give advice on legal questions.**

DATE: 8/1/02

SIGNED (Sign and "X" proper box): ☒ Comm. of Superior Court ☐ Assistant Clerk

TYPE IN NAME OF PERSON SIGNING AT LEFT: Jay H. Sandak

FOR THE PLAINTIFF(S) PLEASE ENTER THE APPEARANCE OF:

NAME AND ADDRESS OF ATTORNEY, LAW FIRM OR PLAINTIFF IF PRO SE (No., street, town and zip code): Sandak Hennessey & Greco, 970 Summer St., Stamford 06905

TELEPHONE NUMBER: 203-425-4200

JURIS NO. (If atty. or law firm): 401577

NAME AND ADDRESS OF PERSON RECOGNIZED TO PROSECUTE IN THE AMOUNT OF $250 (No., street, town and zip code): Cheron A. Carruthers, 71 Aiken St., Norwalk, CT 06851

SIGNATURE OF PLAINTIFF IF PRO SE

# PLFS.	# DEFS.	# CNTS.	SIGNED (Official taking recognizance) ("X" proper box)	
1	1	1		☒ Comm. of Superior Court ☐ Assistant Clerk

For Court Use Only

FILE DATE

IF THIS SUMMONS IS SIGNED BY A CLERK:
a. The signing has been done so that the Plaintiff(s) will not be denied access to the courts.
b. It is the responsibility of the Plaintiff(s) to see that service is made in the manner provided by law.
c. The Clerk is not permitted to give any legal advice in connection with any lawsuit.
d. The Clerk signing this Summons at the request of the Plaintiff(s) is not responsible in any way for any errors or omissions in the Summons, any allegations contained in the Complaint, or the service thereof.

I hereby certify I have read and understand the above:	SIGNED (Pro Se Plaintiff)	DATE SIGNED	DOCKET NO.
		8/1/02	

RETURN DATE: SEPTEMBER 3, 2002	:	SUPERIOR COURT
ST. MARY'S PARISH CORPORATION A/K/A ST. MARY'S PARISH	:	J. D. OF DANBURY
V	:	AT DANBURY
TOWN OF RIDGEFIELD PLANNING & ZONING COMMISSION	:	AUGUST 1, 2002

APPEAL UNDER CONN. GEN. STAT §8-8
FROM TOWN OF RIDGEFIELD PLANNING AND ZONING COMMISSION

To the Superior Court for the Judicial District of Danbury at Danbury on September 3, 2002, comes St. Mary's Parish Corporation a/k/a St. Mary's Parish ("St. Mary's" or the "Applicant"), appealing from a decision of the Planning and Zoning Commission of the Town of Ridgefield ("Commission") and complains and says:

1. St. Mary's Parish Corporation a/k/a St. Mary's Parish, a religious institution providing spiritual and ministerial services to the community, ("St. Mary's") is the owner of certain property commonly known as 183 High Ridge Avenue, Ridgefield, Connecticut ("Property").

2. The Property is located in a R7.5 zone, and Section 406(B) of the Ridgefield Zoning Regulations which references section 333.0, allows religious and associated educational uses in such zone upon the issuance of a Special Permit by the Commission.

3. On or about January 30, 2002, St. Mary's applied to the Commission for a Special Permit to erect a gymnasium with other site improvements, including meeting space for the assembly of groups sponsored by and relating to the religious activities of the Applicant, as an

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addition to the St. Mary's School located at 183 High Ridge Avenue, Ridgefield, Connecticut ("Application").

4. On April 9, 2002, a public hearing was opened on said Application, at which hearing the Commission received testimony and evidence in support of the Application.

5. At a meeting on July 9, 2002, the Commission voted to deny the Application and notice of such decision was published in the Ridgefield Press on July 18, 2002.

6. As the Applicant and owner of the subject property, St. Mary's is aggrieved by the actions of the Commission.

7. In denying the Application, as set forth herein, the Commission acted illegally, arbitrarily, in violation of state and federal law, and abused the discretion vested in it in that:

a. the Commission's decision was not supported by record before the Commission;

b. the Commission, acting in its administrative capacity, made a decision that was not based upon public safety, health or welfare of the community;

c. the Commission's decision has the effect of illegally denying the Applicant the right to use its property as permitted by the regulations;

d. the record in this case is devoid of any evidence to rebut or overcome the conclusive presumption that the use requested does not adversely affect the neighborhood, thereby precluding this Commission from concluding

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that the proposed use would adversely affect the neighborhood;

e. the Commission based its decision, in part, on the need for a variance of the regulations that was not required or necessary;

f. the Commission concluded that the Application failed to meet the mandates of Section 312.02C (1),(2) and (3) of the Ridgefield Zoning Regulations when there was insufficient evidence in the record to support such conclusions;

g. the Commission, in denying the Application, violated the Religious Land Use and Institutionalized Persons Act of 2000 (42 USC §2000cc et. seq) ("RLUIPA");

i. in that the decision of the Commission had the effect of applying the Ridgefield Zoning Regulations in such a manner that imposes a substantial burden on the rights of St. Mary's to exercise its rights as protected under said federal legislation;

ii. in that in denying St. Mary's Application the Commission failed to demonstrate that said denial was in furtherance of a compelling governmental interest, and that the denial was the least restrictive means of furthering that compelling governmental interest;

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iii. in that the denial of the Application by the Commission had the effect of treating this religious institution on less than equal terms with non-religious uses in violation of Section 2(b)(1) of RLUIPA (42 USC 2000cc(b)(1));

iv. in that the denial of the Application by the Commission unreasonably limits religious assemblies, institutions or structures within the Town of Ridgefield in violation of Section 2(b)(3) of RLUIPA (42 USC 2000cc(b)(3)(B));

h. the decision of the Commission constituted an ultra vires act by the Commission because its decision is not supported by the laws appertaining.

8. The Commission as an agency of the Town of Ridgefield is estopped from denying the applicability of RLUIPA by the November 5, 2001 decision of the Zoning Board of Appeals of the Town of Ridgefield, another agency of the Town of Ridgefield, which granted a variance relating to coverage for this project, specifically citing RLUIPA and its applicability to this project.

WHEREFORE, the Plaintiff respectfully requests that its Appeal be sustained and an order enter by this Court approving the Plaintiff's Application for Special Permit.

LAW OFFICES
SANDAK HENNESSEY & GRECO LLP
970 SUMMER STREET • STAMFORD, CONNECTICUT 06905 • (203) 425-4200 • JURIS NO. 401577

WHEREFORE, the Plaintiff appeals from the decision of the Planning and Zoning Commission of the Town of Ridgefield denying its Application and prays that the Court:

1) Sustain the Appeal;

2) Enter an order directing the Commission to approve the Plaintiff's Application;

3) Attorneys fees pursuant to the Religious Land Use and Institutionalized Persons Act of 2000 (42 USC 1988(b));

4) Such other and further relief as this Court deems appropriate.

THE PLAINTIFF, ST. MARY'S CORPORATION
A/K/A ST. MARY'S PARISH

BY _____

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