

Affordable Housing Land Use Appeals

A Scorecard and Evaluation

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Timothy S. Hollister
Joseph P. Williams
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06106-1919
thollister@goodwin.com
jwilliams@goodwin.com



Section 8–30g: Milestones

- 1987-88 – Original Blue Ribbon Commission
- Public Act 89-311, effective July 1, 1990
- March 1992 – first court decision, TCR New Canaan v. Trumbull PZC ("Avalon Gates")
- 1995 – Industrial land provision adopted
- 1999 – Christian Activities Council v. Glastonbury
- 1999 - 2000 – Second Blue Ribbon Commission, Public Act 00-206
- 2001 – Quarry Knoll v. Greenwich – established current review standard, overruling Christian Activities Council

Housing Production, 1990-October 2006

- Approximately 3,300 affordable units
- Approximately 6,500 market rate units
- Approximately two percent of statewide housing production



DECD "Ten Percent List"

Changes in Governmentally Assisted*/CHFA Units
and Deed-Restricted Units, 1991 – April 13, 2006,
in Towns Not Exempt from § 8-30g,
plus Killingly, Norwalk and West Haven

	Governmentally Assisted/CHFA Units	Deed-Restricted Units
1991	34,461	2
April 2006	39,455	1,942
Added	4,994	1,940

* Includes "Elderly" category on DECD's lists, 1991-96.

Ten Percent List Changes, 1991-2006

- Non-exempt to exempt: Killingly, Norwalk, West Haven, Derby
- Exempt to non-exempt: Naugatuck
- Non-exempt to exempt to non-exempt: Danbury

Towns at Eight to Ten Percent

● Canton	8.16%
● Colchester	7.93%
● Danbury	9.88%
● Naugatuck	8.97%
● Portland	8.48%
● Windsor Locks	8.21%

Observations About § 8–30g Housing Production

- One family at a time
- § 8-30g only helps zoning, not wetlands, sewage disposal (but see 271 Conn. at 59-60)
- No "comprehensive permit" as in Mass.
- 1990-97 – real estate recession in New England
- 2000 amendments have made private, for-profit development difficult

Litigation Scorecard, 1991-2006



- 143 judicial decisions
- 97 separate developments
- 70 percent – developers prevailed on merits
- 30 percent – municipality prevailed on merits

Judicial Decisions Per Year

1992	6	2000	10
1993	12	2001	9
1994	7	2002	16
1995	9	2003	12
1996	9	2004	9
1997	5	2005	8
1998	7	2006 (through October)	8
1999	10		

"Substantial Public Interests in Health or Safety . . . That Clearly Outweigh Need for Affordable Housing"

Invalid Denial Reasons	Valid Denial Reasons
Density <u>per se</u>	Fire safety
Preservation of neighborhood character	Inadequate sewage disposal
Fiscal/school impacts	Inadequate water supply
Violation of existing zoning regulations or Plan of Development	Inadequate traffic study
Traffic congestion (as opposed to safety)	Open space (if a long-time municipal priority)
Aesthetics	

Application Requirements

- Bona fide, complete application
- Affordability Plan
- Administrative mechanism
- Affirmative Fair Housing Marketing Plan
- Designation/dispersal of affordable units
- Phasing plan
- Comparability between affordable and market rate units



Section 8-30g Success Stories



- Trumbull Townhomes, Trumbull
- Old Farms Crossing, Avon
- Avalon at Darien, Darien
- Olde Oak Village, Wallingford
- Sea Spray, East Lyme

Observations About the Appeals Process



- Slow – no surprise
- Recently, some approvals/mediations/settlements
- Rental market flat, 2000-05
- 2004-06 high market-rate sales prices in Fairfield County make some set-aside proposals more economic

Current Hot Topics

- Industrial land provision (Berlin, Oxford)
- Coordinate permits (River Bend/Simsbury, Toll Brothers/Bethel)
- Mobile manufactured homes and mobile home parks – Oxford
- Growing judicial impatience with denial resolutions? (JPI v. Hamden, July 2006)

Current Pending Local § 8-30g Applications

- Baker Residential, Berlin, 374 sale units (denied October 5, 2006, to be appealed)
 - Redcoat Development, Westport, 20 sale units
 - Garden Homes, Oxford, 113 mobile manufactured homes (homes owned, pad leased)
 - Dauti Construction, Newtown, 26 sale units
 - Vigliotti, Branford, 120 rental apartments
 - S Squared Development, Milford, 50 sale units
 - Migliaro, North Haven, 300+ sale units
 - Todd's Ridge, Shelton, 150 rental apartments
 - Ravenswood, Orange, 60 age-restricted sale units
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- Hamilton Development, Westport, 27 units, 20 percent set aside at 80 percent of median per Town regulations (not § 8-30g)

Current Court Appeals

- AvalonBay, Wilton, 100 rental apartments (Supreme Court)
- AvalonBay, Stratford, 146 rental apartments (Supreme Court)
- Davenport, Bethel, 23 sale units (Superior Court)
- Griffin Land/River Bend, Simsbury, 371 sale units (Appellate Court – wetlands)
- Halter Estates, Bethany, 52 age-restricted sale units (Superior Court)
- JPI, Hamden, 256 rental apartments (PZC's Petition for Certification pending, Appellate Court)
- Toll Brothers, Bethel, 129 sale units (Superior Court)
- AvalonBay, Shelton (Armstrong Road), 302 rental units (Superior Court)

Current § 8-30g-Related Construction

- Jordan Properties, Old Saybrook, 168 sale units (approved – not started)
- Izzo, Westport, 12 sale units (complete)
- Terrar, Ridgefield, 50 sale units (under construction)
- Royal Oaks/Pelletier, East Hampton, 94 sale units (under construction)
- Vespera, East Lyme, 50 units (approved)