

# Affordable Housing Applications Under Conn. Gen. Stat. § 8-30g And Incentive Housing Zones

Connecticut Land Use Law For  
Municipal Land Use Agencies

Sponsored by the CBA Planning & Zoning Section  
Wesleyan University  
March 28, 2009

Joseph P. Williams  
Shipman & Goodwin LLP  
(860) 251-5127  
jwilliams@goodwin.com  
© Shipman & Goodwin LLP

# Affordable Housing Applications Under Conn. Gen. Stat. § 8-30g



# 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, 31 of 169 municipalities are exempt from 8-30g

## 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 ("assisted housing")



## Example: Set-aside development, three-bedroom sale unit (60% of median):

– Statewide median income (FY 2008) =	\$82,100
-- Median income, adjusted for household size (104%) =	\$85,384
– \$85,384 x 60% = \$51,230	
– \$51,230 x 30% = \$15,369	
– \$15,369 ÷ 12 months =	\$1281/month
– Minus estimated monthly taxes, insurance, condo fees, utility allowance	\$463
<hr/>	
– Maximum mortgage payment	\$818/month
– \$818 at 7% for 30 years will support a mortgage of	\$122,933
<hr/>	
– Add maximum down payment (20%)	\$30,733
<hr/>	
– Maximum sale (or resale) price	<b>\$153,666</b>



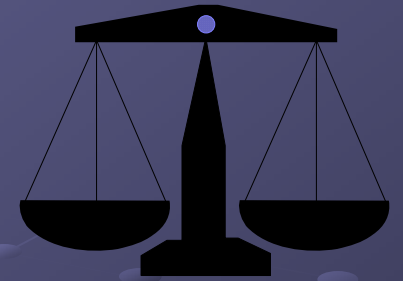
## Example: Set-aside development, two-bedroom rental unit (80% of median):

- Median income, adjusted (90%)= \$73,890
  - \$73,890 x 80% = \$59,112
  - \$59,112 x 30% = \$17,734
  - \$17,734 ÷ 12 months = \$1,478/month
  - Compare to 120 percent of HUD Fair Market Rent 2008 (take lower number) \$1,182/month
- 
- Maximum monthly payment (including utility allowance) **\$1,182**





# Key feature of § 8-30g: burden of proof shifts to the commission to defend denial reasons



## Traditional Land Use Case

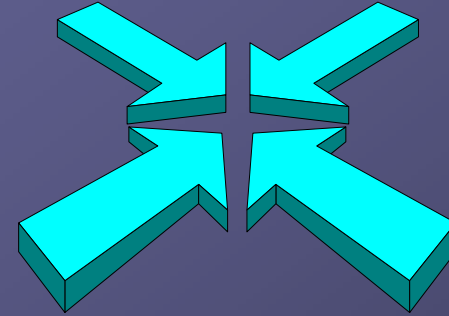
- Property owner's/applicant's burden
- To show lack of evidence to support, or illegality
- Court defers to commission's factual findings, interpretations of regulations, conclusions

## 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) Necessary to protect 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) Commission’s concerns cannot be addressed by “reasonable changes” to development plan

# What land use applications are covered by § 8-30g?

## Covered

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

## Not covered

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

# “Substantial Public Interest”

**Court conducts independent review –  
no deference to commission opinions:**

## Substantial interests

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

## Not substantial interests (or *per se* invalid)

- Aesthetics
- “Character” of the town/neighborhood
- Existence of other affordable (but market-rate) housing
- Density
- Impact on schools, taxes, property values

## “Need for Affordable Housing”:

- Commission must (1) recognize a need for affordable housing, and (2) balance that need against an identified interest in public health or safety
- This prong often neglected in denial resolutions

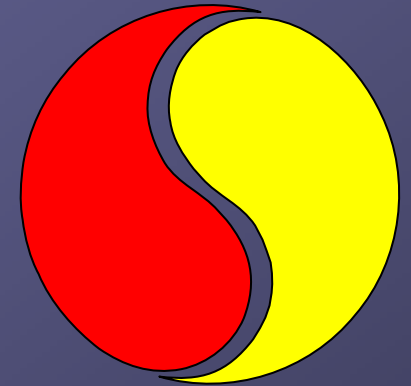


# Processing the § 8-30g application:

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



## Resubmission procedure:



- Unique to § 8-30g applications
- If application denied or substantially modified, applicant may reapply to Commission within 15 days from publication of notice
- Record from initial application carried forward
- 65 days from receipt to Commission action
- Can appeal original decision and modification



# A PRIMER ON THE HOMEConnecticut LAW

By: Shipman & Goodwin's Environment,  
Energy and Land Use Group

[www.shipmangoodwin.com](http://www.shipmangoodwin.com)  
© Shipman & Goodwin LLP



# HOMEConnecticut

- Passed as Public Act 07-4, in the June 2007 Special Session
- Effective July 1, 2007
- Codified at Conn. Gen. Stat. §§ 8-13m and following (Chapter 124b)

# PURPOSES OF HOMEConnecticut

A voluntary, collaborative process for municipalities across Connecticut to create:

- a surplus of land
- zoned as-of-right for residential development
- at densities that will allow lower-priced market-rate housing and deed-restricted moderate income housing



# SUMMARY: HOW HOMEConnecticut WORKS

## A municipality:

- submits to the Office of Policy and Management ("OPM") a "Project Plan" for a potential Incentive Housing Zone ("IHZ")
- receives technical assistance grant, up to \$50,000, to evaluate IHZ
- prepares a draft zoning regulation for IHZ, with design standards, meeting minimum density requirement
- applies to OPM for IHZ approval
- after receiving OPM approval, receives \$2,000 per potential unit in IHZ
- adopts the zone regulation
- approves site or subdivision plan application
- issues building permits, collects \$2,000 per building permit from OPM



# KEY ELEMENTS OF INCENTIVE HOUSING ZONES

1. "Eligible location": EITHER
  - near transportation, or
  - "area of concentrated development," or
  - area with "existing, planned, or proposed infrastructure" to support required IHZ densities
2. "Developable land": land that will support Act's minimum densities, but excluding:
  - public uses
  - parks and open space
  - land subject to development restrictions
  - wetlands and watercourses
  - more than 1/2 contiguous acre with steep slopes(Thus, land remaining after exclusions is NET developable land.)





# KEY ELEMENTS OF INCENTIVE HOUSING ZONES (continued)



3. Minimum IHZ densities on NET developable land in eligible location:
- 6 / acre, single-family detached
  - 10 / acre, townhome or duplex
  - 20 / acre, multi-family
- (NOTE: may zone for one type, two, or all three)

4a. Small town exemption: under 5,000 population (2000 Census) may seek OPM approval for 4 / 6 / 10 units per acre

4b. OPM may *waive* density requirements for land "owned or controlled" by municipality, land trust, housing trust fund, or non-profit housing agency, *provided* development will be *100 percent* set aside at 80 percent of area median

5. Approval by site plan or subdivision only – *non-discretionary standards*; no special permits or special exceptions

# KEY ELEMENTS OF INCENTIVE HOUSING ZONES (continued)

6. Set aside of lower-cost units: minimum 20 percent for 30 years for households earning 80 percent or less of AREA (not statewide) median income; higher set asides allowed
7. "Consistent with State Plan of Conservation and Development" (check Locational Map)
8. Zone adoption must increase as-of-right residential density within zone boundary by *at least 25 percent*
9. Mixed uses allowed
10. Subzones (for example, part single-family, part multi-family) allowed
11. 20 percent minimum set aside requires enforceable regulation / deed restriction / covenants

# KEY ELEMENTS OF INCENTIVE HOUSING ZONES (continued)

12. May be located in (but does not override) historic district
13. Design standards allowed / encouraged, so long as they will not "unreasonably impair the economic or physical feasibility of constructing housing at the minimum densities required by the Act"
14. Special finding required for IHZ for single-family detached homes on subdivided lots



# INCENTIVE HOUSING ZONE ADOPTION PROCESS



(if municipality, after planning study, decides to proceed with IHZ)

1. Local zoning commission prepares proposed IHZ regulation, map, deed restriction, density calculation, housing plan
2. Town transmits package to OPM for "preliminary determination of eligibility"
3. OPM acts within 60 days: if no action, municipality must resubmit / new clock
4. OPM approves or denies
5. If OPM approves, Town eligible for \$2,000 / potential unit
6. Local zoning commission adopts IHZ; OPM pays \$2,000 per unit
7. Municipal reporting requirements to OPM; possible revocation procedures
8. OPM issues "certificates" to towns for continued compliance; statewide list, annual report

# OTHER INCENTIVE HOUSING ZONE FEATURES



1. OPM prohibited from approving regulations that will impair or discriminate against subsidized housing
2. No incentive *payments* for age-restricted units (but units allowed in zone)
3. Preliminary workshops allowed
4. Restrictions on charging applicant technical review fees
5. Referrals to other town / city agencies allowed
6. Limits on conditions of site plan approval
  - to ensure compliance
  - to mitigate extraordinary impacts on other properties



# OTHER INCENTIVE HOUSING ZONE FEATURES



7. Denial bases of site plan or subdivision:
  - non-compliance with regulations
  - information or fees not submitted
  - off-site impacts cannot be mitigated
8. Incentive payments go to General Fund – no restrictions
9. IHZ regulation may allow multi-family, townhomes, single-family, or any combination
10. Site plan or subdivision plan may be below densities stated in regulation



# CONN. GEN. STAT. §§ 8-30g EXEMPTION

Within an incentive housing zone finally approved by OPM, incentive housing zone applicant "may not make such an application utilizing the provisions of [Conn. Gen. Stat.] § 8-30g . . . ."

# USES OF \$4 MILLION APPROPRIATED

- Planning grants
- Infrastructure grants
- Incentive zone regulations payments / \$2,000 per potential unit
- Incentive zone building permit payments (\$2,000 per unit for multi-family / duplex / townhome, \$5,000 for single-family)
- CAVEAT: "Subject to available funds"

