MUNICIPAL PLANNING FOR AFFORDABLE HOUSING

What Connecticut Municipalities and Their Officials Need to Know

Kari L. Olson, Esq.
860.240.6085 | kolson@murthalaw.com

Joseph D. Szerejko, Esq.
860.240.6186 | jszerejko@murthalaw.com

December 3, 2019
• **KARI L. OLSON** - Ms. Olson is a partner in the firm's Litigation Department and a co-chair of the firm’s Municipal and Land Use practice groups. She also chairs the Connecticut Land Use Practice Group. She received her B.S., Cum Laude, from the University of Connecticut and, in 1998, her J.D. with High Honors from the University of Connecticut School of Law. She was admitted to the Connecticut Bar in 1998. Ms. Olson concentrates her practice in general municipal law and land use litigation. She represents municipalities in all matters of municipal concern and governance.

• **JOSEPH ("JOE") D. SZEREJKO** - Mr. Szerejko is an associate in the firm’s Litigation Department and is a member of the firm’s Municipal, Land Use, and Appellate practice groups. He received his B.A. from Bates College and his J.D. from the University of Connecticut School of Law. He is admitted to practice in Connecticut State Courts as well as the U.S. District Court for the District of Connecticut. Mr. Szerejko focuses his practice in municipal and land use litigation, as well as landlord-tenant and housing litigation and property tax appeals. He also advises Connecticut municipalities and their officials on various matters.
DISCLAIMER

• This presentation contains educational material that provides only a general overview. This presentation and associated materials do not constitute legal advice. Please contact us if you would like specific legal advice.
The Origins

• Affordable housing initiatives in Connecticut and resulting laws truly came about in the 1980s.

• Around this time, there was an affordable housing crisis in Connecticut and state government recognized that there were many communities throughout the state where individuals and families could not afford to live and work.

• As a result, the legislature convened a Blue Ribbon Commission to study affordable housing issues throughout the state and to propose solutions to address the problem.

• This gave rise to the Affordable Housing Land Use Appeals Act (now codified in Conn. Gen. Stat. § 8-30g) (the “Act”), which was passed by the Connecticut Legislature and became effective in 1990.
The Act’s Policy Underpinnings

• The Act basically encourages the development of affordable housing throughout Connecticut at the local municipal level.
• The Act was originally premised on encouraging suburban and rural municipalities to allow more affordable housing development and to spread such development outside of Connecticut’s urban centers.
• Our Supreme Court has noted that the Act is a remedial statute that “must be liberally construed in favor of those whom the legislature intended to benefit.” Kaufman v. Zoning Comm’n of City of Danbury, 232 Conn. 122, 140 (1995).
• Since its inception, the Act has been strengthened and modified to catalyze affordable housing development at the local government level.
Affordable Housing Defined (8-30g)

“Affordable housing development” means a proposed housing development which is either: (A) assisted housing, or (B) a set-aside development

“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 or Section 1437f of Title 42 of the United States Code.

*Commonly referred to as Subsidized Housing
Affordable Housing Defined (8-30g)

“Set-aside development” means a development

30% of proposed dwellings must be deed or covenant restricted for at least forty years

To be sold or rented at, or below, prices which will preserve the units as affordable housing.

Occupant/buyer has an income level less than or equal to eighty per cent of the median income.

In addition, at least 15% of the units shall be sold or rented to persons and families whose income is less than or equal to sixty per cent of the median income the rest to those at or below the 80% mark.

To be affordable, occupant/buyer must be able to expend no more than 30% of their annual income towards rent/mortgage.
Affordable Housing Defined (8-30g)

Example: 120 units proposed.

36 units must be dedicated to affordable restrictions to be rented or sold to those with incomes at or below 80% of the median.

18 units must be dedicated to affordable restrictions to be rented or sold to those with incomes at or below 60% of the median.

All prices/rents must be set so that the qualifying owner/buyer will spend no more than 30% of their annual income on housing.
Median Income

“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.


*Connecticut 2019= $100,400

https://www.huduser.gov/portal/datasets/il/il2019/select_Geography.odn

*Hartford Area 2019: $97,897
Workforce Housing vs. Subsidized Housing

Not all affordable housing is “subsidized.”

*Those who provide services and goods to the community should be able to live and work in the communities they serve.
Why Should Municipalities Care?

- **Public Policy Considerations**

  - Connecticut Lacks Affordable Housing
    - A 2019 report by the National Low Income Housing Coalition ranked CT as having the 9th most expensive *housing wage* in the country.
    - $25.40/hr required to afford a 2-bedroom rental home
    - Must work 101/wk at the minimum wage to afford 2 bedroom rental home

  - Do you want your community contributors to be able to live in your community?
    - Attracts business owners and entrepreneurs
    - Attracts a skilled workforce

*Housing Wage* is the hourly wage a full-time worker must earn to afford a modest rental home while spending no more than 30% of his or her income on rent and utilities.
Why Should Municipalities Care? – Cont’d

- **Statutory Mandates - Affordable Housing Act**
  - Chapter 126a: Affordable Housing Land Use Appeals
  - Your municipality is subject to it unless your municipality can establish that 10% of your housing units are affordable.
  - According to the State Department of Housing, in 2018 only 29 municipalities qualified for this exemption.
Minimum Threshold: 10%

- If at least 10% of a municipality’s dwelling units do not meet one or more of the following criteria (which comprise the definition of “affordable housing”), then the municipality’s land use agencies are subject to the Act’s application and appeals procedure:
  - Assisted housing;
  - Housing financed by CHFA mortgages;
  - Housing subject to binding deed restrictions or covenants which require that dwelling units must be sold or rented at or below prices which will allow persons and families to pay only up to 30% of their income where their income is less than or equal to 80% of the median income;
  - Mobile manufactured homes located in mobile manufactured home parks containing covenants or deed restrictions which require that the homes, at least for 10 years, shall be sold or rented at prices which will allow persons and families to pay only up to 30% of their income where their income is less than or equal to 80% of the median income; and/or
  - Mobile manufactured homes located in resident-owned mobile manufactured home parks.

- Once a year, the CT Department of Housing is required to post a listing of all municipalities in the state which meet this 10% threshold. These municipalities are deemed “exempt.”
<table>
<thead>
<tr>
<th>Town</th>
<th>Total Housing Units 2010 Census</th>
<th>Governmentally Assisted</th>
<th>Tenant Rental Assistance</th>
<th>Single Family CHFA/USDA Mortgages</th>
<th>Deed Restricted Units</th>
<th>Totally Assisted Units</th>
<th>Percent Afforded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ansonia</td>
<td>8,148</td>
<td>347</td>
<td>747</td>
<td>134</td>
<td>9</td>
<td>1,237</td>
<td>15.18%</td>
</tr>
<tr>
<td>Bloomfield</td>
<td>9,019</td>
<td>658</td>
<td>96</td>
<td>328</td>
<td>0</td>
<td>981</td>
<td>10.88%</td>
</tr>
<tr>
<td>Bridgeport</td>
<td>57,012</td>
<td>6,434</td>
<td>4,240</td>
<td>900</td>
<td>19</td>
<td>11,593</td>
<td>20.33%</td>
</tr>
<tr>
<td>Bristol</td>
<td>27,011</td>
<td>1,766</td>
<td>815</td>
<td>1,025</td>
<td>0</td>
<td>3,806</td>
<td>13.35%</td>
</tr>
<tr>
<td>Danbury</td>
<td>31,154</td>
<td>1,590</td>
<td>943</td>
<td>544</td>
<td>296</td>
<td>3,373</td>
<td>10.83%</td>
</tr>
<tr>
<td>Derby</td>
<td>5,849</td>
<td>275</td>
<td>302</td>
<td>96</td>
<td>0</td>
<td>673</td>
<td>11.51%</td>
</tr>
<tr>
<td>East Hartford</td>
<td>21,328</td>
<td>1,574</td>
<td>776</td>
<td>989</td>
<td>0</td>
<td>3,339</td>
<td>15.66%</td>
</tr>
<tr>
<td>East Windsor</td>
<td>5,045</td>
<td>559</td>
<td>40</td>
<td>102</td>
<td>14</td>
<td>715</td>
<td>14.17%</td>
</tr>
<tr>
<td>Enfield</td>
<td>17,558</td>
<td>1,340</td>
<td>219</td>
<td>613</td>
<td>7</td>
<td>2,179</td>
<td>12.41%</td>
</tr>
<tr>
<td>Groton</td>
<td>17,978</td>
<td>3,587</td>
<td>94</td>
<td>358</td>
<td>10</td>
<td>4,049</td>
<td>22.52%</td>
</tr>
<tr>
<td>Hartford</td>
<td>51,822</td>
<td>10,293</td>
<td>8,267</td>
<td>1479</td>
<td>0</td>
<td>20,039</td>
<td>35.67%</td>
</tr>
<tr>
<td>Killingly</td>
<td>7,592</td>
<td>520</td>
<td>112</td>
<td>202</td>
<td>0</td>
<td>834</td>
<td>10.99%</td>
</tr>
<tr>
<td>Manchester</td>
<td>25,996</td>
<td>1,831</td>
<td>932</td>
<td>696</td>
<td>32</td>
<td>3,691</td>
<td>14.20%</td>
</tr>
<tr>
<td>Meriden</td>
<td>25,892</td>
<td>1,887</td>
<td>1,168</td>
<td>1011</td>
<td>11</td>
<td>4,077</td>
<td>15.75%</td>
</tr>
<tr>
<td>Middletown</td>
<td>21,223</td>
<td>3,019</td>
<td>1,163</td>
<td>484</td>
<td>25</td>
<td>4,691</td>
<td>22.10%</td>
</tr>
<tr>
<td>New Britain</td>
<td>31,226</td>
<td>2,911</td>
<td>1,477</td>
<td>1,107</td>
<td>177</td>
<td>5,672</td>
<td>18.16%</td>
</tr>
<tr>
<td>New Haven</td>
<td>54,987</td>
<td>9,434</td>
<td>6,600</td>
<td>1,009</td>
<td>481</td>
<td>17,523</td>
<td>31.68%</td>
</tr>
<tr>
<td>New London</td>
<td>11,840</td>
<td>1,592</td>
<td>483</td>
<td>486</td>
<td>99</td>
<td>2,660</td>
<td>22.47%</td>
</tr>
<tr>
<td>Norwalk</td>
<td>35,415</td>
<td>2,215</td>
<td>1,331</td>
<td>363</td>
<td>607</td>
<td>4,516</td>
<td>12.75%</td>
</tr>
<tr>
<td>Norwich</td>
<td>18,659</td>
<td>2,221</td>
<td>745</td>
<td>528</td>
<td>0</td>
<td>3,494</td>
<td>18.73%</td>
</tr>
<tr>
<td>Plainfield</td>
<td>6,229</td>
<td>377</td>
<td>186</td>
<td>221</td>
<td>0</td>
<td>784</td>
<td>12.59%</td>
</tr>
<tr>
<td>Putnam</td>
<td>4,299</td>
<td>383</td>
<td>62</td>
<td>84</td>
<td>0</td>
<td>529</td>
<td>12.31%</td>
</tr>
<tr>
<td>Stamford</td>
<td>50,573</td>
<td>4,112</td>
<td>1,879</td>
<td>385</td>
<td>1272</td>
<td>7,648</td>
<td>15.12%</td>
</tr>
<tr>
<td>Torrington</td>
<td>16,761</td>
<td>928</td>
<td>329</td>
<td>512</td>
<td>17</td>
<td>1,786</td>
<td>10.66%</td>
</tr>
<tr>
<td>Vernon</td>
<td>13,696</td>
<td>1,508</td>
<td>401</td>
<td>372</td>
<td>12</td>
<td>2,293</td>
<td>16.50%</td>
</tr>
<tr>
<td>Waterbury</td>
<td>47,991</td>
<td>5,344</td>
<td>2,916</td>
<td>1,758</td>
<td>28</td>
<td>10,046</td>
<td>20.93%</td>
</tr>
<tr>
<td>West Haven</td>
<td>22,446</td>
<td>1,024</td>
<td>1,499</td>
<td>443</td>
<td>0</td>
<td>2,965</td>
<td>13.21%</td>
</tr>
<tr>
<td>Winchester</td>
<td>5,613</td>
<td>349</td>
<td>183</td>
<td>86</td>
<td>0</td>
<td>618</td>
<td>11.01%</td>
</tr>
<tr>
<td>Windham</td>
<td>9,570</td>
<td>1,763</td>
<td>610</td>
<td>360</td>
<td>0</td>
<td>2,733</td>
<td>28.56%</td>
</tr>
</tbody>
</table>
Why Should Municipalities Care? – Cont’d

- **Statutory Mandates - Affordable Housing Act**

  - Affordable housing has been historically disfavored among residents.
  
  - Fear it equates to subsidized “low income” housing, crime, drugs, and violence.
Affordable Housing Land Use Appeals

- Allows a developer to make application and propose a development without regard for local zoning laws.
  
  - Any density
  
  - Any location (maybe not an industrial zone)
  
  - Depending upon regulations, possible zone change altogether with submission of concept plan.
What Agencies Are Covered?

• As used in the Act, “Commission” means:
  o Zoning Commissions;
  o Planning Commissions;
  o Planning and Zoning Commissions;
  o Zoning Boards of Appeals; and
  o Other agencies “exercising zoning or planning authority”

• The following are excluded:
  o Water Pollution Control Authorities
  o Inland Wetlands and Watercourses Commissions
What Applications Are Covered?

• “…any application made to a commission in connection with an affordable housing development….” Conn. Gen. Stat. § 8-30g(a)(2).
  
  o Site Plan Applications
  o Zone Change Applications
  o Subdivision Applications
  o Special Permit Applications
  o Applications for Text Amendments
  o Variance Applications
Affordable Housing Land Use Appeals

Burden Shifting

To overcome proposal, burden shifts to the planning and zoning commission(s) to establish that:

1. “the decision is necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider;

2. such public interests clearly outweigh the need for affordable housing; and

3. such public interests cannot be protected by reasonable changes to the affordable housing development ....”

“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.”
Affordable Housing Land Use Appeals

- Burden Shifting
  - Burden to overcome need for affordable housing has become extremely difficult.
  - May even impact developer’s need to comply with local ordinances, such as road and driveway ordinances. See, e.g., Brenmor v. Lisbon, 320 Conn. 928 (2017)
Affordable Housing Land Use Appeals

- What does it really mean?
  - Potentially could disrupt the orderly development of your municipality. (Location, Public Facilities, Traffic, Etc.)
  - Developers have been known to use the affordable housing act as a sword.
Moratoria

- The Act does not apply to a municipality where the Commissioner of Housing has published a certification of affordable housing project completion in the Connecticut Law Journal. This act commences a statutory moratorium on affordable housing development for 4 years within the municipality.

- Note that this moratorium can be obtained by municipalities that do not even meet the 10% minimum threshold but they must be demonstrating to the Commissioner that they are making adequate progress on affordable housing development.

- The procedure for obtaining the moratorium, however, is very complicated.
Why Should Municipalities Care? – Cont’d

- Other Statutory Mandates:
  
  - In 2017, the Connecticut Legislature passed P.A. 17-170, which in relevant part requires each municipality, at least once every 5 years, to prepare or amend and adopt an affordable housing plan (now codified in Conn. Gen. Stat. § 8-30j). The plan must specify how the municipality will increase the number of affordable housing developments within its jurisdiction.
Why Should Municipalities Care? – Cont’d

- In legislative session year 2018, Gov. Malloy pushed for legislation that was going to penalize numerous municipalities that did not have affordable housing.

- Gov. Malloy’s bill was introduced, H.B. 5045 (*An Act Establishing Accountability for Fair and Affordable Housing Through Zoning Regulations*) (the “Bill”). It was going to make revisions to Conn. Gen. Stat. § 8-2, the statute which gives municipal planning and zoning authorities their authority to enact zoning regulations. The Bill proposed that:
  
  - Per Section 8-2 zoning regulations must “affirmatively further fair housing.”
  
  - Each municipality, at least once every 5 years, must demonstrate to the Commissioner of Housing that it was complying with all affordable housing-related provisions of Section 8-2.
  
  - Zoning regulations must provide for, rather than encourage, a variety of housing development opportunities to meet local and regional needs.

- Failure to comply would make municipalities ineligible for certain discretionary state funding.

- The Bill ultimately died in the Senate in April 2018.
Why Municipalities Should Care in a Nutshell

- Connecticut needs Affordable Housing
- Affordable Housing Appeals Act trumps zoning
- Statutory Requirement to affirmatively plan for Affordable Housing
- Failure to comply could:
  - Disrupt the orderly development of your town
  - Deny residency to a skilled and diverse community and/or workforce
  - Impact economic development
  - Result in punitive sanctions.
The Need for Affordable Housing - In Summary

• “Every town needs some diversity in its housing options. Housing needs vary greatly at different times in our lives. To retain diversity within our community, our town must provide the equivalent in its housing stock. Without this flexibility any change in family size, health or employment puts us in danger of losing the members of our community we should be valuing the most – our teachers, our health care providers, our employees and our volunteers.” Town of Salisbury Affordable Housing Plan, p. 8.

• Promotes Diversity

• Retains:
  o Young People
  o Seniors
  o Volunteers
The Affordable Housing Plan

- Section 8-30j.
- Must “prepare or amend” at least once very 5 years.
- Must specify how the municipality intends to increase the number of affordable housing developments in the municipality.
- May hold public informational meetings. Proper notice and filing in clerk’s office required.
- Must “regularly review and maintain such plan.”
- Failure to adopt and/or timely amend requires that the chief elected official of the municipality submit a letter to the Commissioner of Housing that explains why.
- *No actual sanctions for noncompliance YET
Affordable Housing Plan Creation and Criteria

- Consider establishing an Affordable Housing Commission/Committee to do the work

- Set goals and define your objectives:
  - Timeframe for researching, drafting, and adopting your Plan
  - Creation of an appropriate number of affordable units over a specified time period.
  - Types of units: multifamily, rental, etc.
  - Consider appropriate sites (sewer, water, transportation, etc.)
Affordable Housing Plan Implementation

- Zoning Text and Map Amendments to encourage affordable housing / multifamily housing?
- Tax incentives for multi-use developments that include affordable units?
- Rehabilitation loans to promote improvements to existing affordable units?
- State funding to promote construction of affordable units?
- Partnerships with other nonprofits, e.g., Habitat for Humanity?
Affordable Housing Regulations

- Create regulations that provide for affordable housing in particular zones in lieu of Affordable Housing Appeals process.
  - Consider infrastructure, sewer, water, transportation.
  - Consider creating floating zones
    - Minimum acreage
    - Density bonuses
  - Financial Feasibility
  - Traffic
  - Buffering
QUESTIONS?