COMMISSION ON CONNECTICUT'S FUTURE AND DEVELOPMENT

Affordable Housing Plans Working Group

March 17, 2022

Primer on General Statutes §§ 8-2 and 8-30g, as amended by Public Act 21-29: the state's basic laws about affordable housing development.

I. Structure of land use law in Connecticut

- Many land use-related functions handled at state agency level
- But § 8-2 delegates broad legislative authority over land use to each of the state's 169 municipalities
- Drafted 100 years ago
- Local land use commission members are volunteers; until this year, no training required
- Judges and courts generally required to defer to local discretion on policy and regulation
- Consequence: municipal land use review is often parochial, protective of *status quo*

II. Section 8-2's Multi-family and Affordable Housing Provisions:

- Control size of buildings
- Regulation of minimum parcel/lot sizes
- Allow cluster development
- Review of regulations under municipality's Plan of Conservation and Development for "consistency"

- 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 state's **consolidated plan** for housing and community development 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

III. Section 8-30g, the Affordable Housing Land Use Appeals Act

- Does not mandate or provide funds for affordable housing
- 1980's: housing prices escalated rapidly, but local commissions rejected many multi-family and affordable developments, sometimes for "pretaxtual" reasons, or based on "character of the town"
- Courts deferred to local discretion
- Multi-family and affordable housing was not getting built despite higher housing cost and greater segregation
- 8-30g adopted 1990 as a "builders' remedy" law
- If property owner agrees to preserve 30% of proposed units as affordable, or accepts government funds and program affordability rules (such as Low Income Housing Tax Credits), and zoning application denied at local level, and appealed to court

- Burden of proof shifts to Commission to prove denial was based on a substantial public health or safety interest that "clearly outweighs" need for more lower-cost housing

- Two exemptions from § 8-30g: (1) permanent exemption for towns with more than 10% of units deed-restricted, CHFA mortgages, or government assisted; and (2) four-year moratorium from application – point system based on affordable units actually built and occupied

IV. Public Act 21-29 – Amendments to Section 8-2

- Requirements, prohibitions, and encouragements to further shape § 8-2 local authority

- Limits on parking space requirements for residential units with opt-out

- Limits on minimum floor area requirements

- Ban on caps on multi-family over 4 units and "middle housing" – duplex, triplex

- Specific rules for Alternative Dwelling Units ("ADUs"), with opt-out

- Requirement that zoning regulations "affirmatively further" purposes of federal Fair Housing Act – proactive steps to overcome discrimination, segregation, exclusion