

TESTIMONY OF NEIL R. MARCUS
ON
RAISED BILL NO. 672
DELIVERED TO THE COMMITTEE ON JUDICIARY
MARCH 24, 2006

Ladies and Gentlemen, my name is Neil Marcus and I am a member of the firm Cohen and Wolf, PC having an office at 158 Deer Hill Avenue in Danbury, Connecticut. I am a practicing attorney having been admitted to the Bar in the State of Connecticut for 33 years. During this time I have specialized in Planning, Zoning and Environmental Issues related to land use development. In such capacity I have had the opportunity of representing and advising developers, not-for-profit agencies and municipalities concerning all aspects of land use development. In the course of my practice I have filed more than 30 affordable housing applications under Section 8-30g of the Connecticut General Statutes and I have participated in approximately 15 to 20 appeals to the Connecticut Superior Court and in some cases both the Appellate and Supreme Court for judicial determination of aspects of the applications. I am concerned with Raised Bill No. 672 for a number of reasons. In the first place it seems to be focused in a direction to dilute the strength of the Affordable Housing Appeals Act and therefore it appears to be contrary to the mandate previously established by the State of Connecticut to

encourage housing opportunities across the board in small, medium and large towns and cities in the State. It appears to be contrary to a decision made by prior Legislative Committees acting in response to studies commissioned by the Legislature where the Act has been modified in such a way as to encourage the creation of affordable housing and in more recent years to make sure that the housing created is more affordable (see Blue Ribbon Commission Report).

A number of years ago I was asked to participate as a member of the Housing Opportunities Team formed by the United Way of Northern Fairfield County. This organization gathered members of the various communities in the Danbury area who represent social service agencies, banks, real estate development interests and other municipal leaders to come up with programs to deal with housing shortages and a serious lack of both low income and affordable housing in our region. There is no shortage in the Greater Danbury area of market rate and in many cases unaffordable housing in the range of \$500,000.00 to \$3,000,000.00 per housing unit. People in this market have a vast choice of housing opportunities. What our studies have revealed, however, is that minimum wage earners or people who are earning at less than the State median income have very few housing choices and opportunities in our area and as a result, we have in the Danbury area a problem of over crowded, blighted inner city neighborhoods where many illegal housing units have been created to the detriment of the tenants.

The Mayor of Danbury has formed a task force on urban blight to try to put an end to illegal apartments in the City of Danbury which have been created in response to the housing shortage. Though this task force is well meaning, it actually contributes to a housing crisis that already exists.

You may ask yourself why this speaker is talking about low income housing when the proposed Bill deals with affordable housing? The reason for this is simple. To understand the housing market in a particular area you need to look through a pipeline to see that there are no blockages. In the Greater Danbury area there is a significant blockage which prevents lower income families from improving their housing opportunities when the units to which they would normally move are unavailable because there is a lack of housing which qualifies under the term "affordable" as defined by Section 8-30g. Though the City of Danbury, itself, maintains approximately 10% of its housing stock as affordable subject to minor variations from year to year, the Towns in the Greater Danbury area all fall significantly below the State mandated target. The resistance of the suburban towns surrounding Danbury to develop affordable housing has created part of the blockage which has resulted in a housing crisis for the region since the City of Danbury is forced to provide housing opportunities for those whose income levels are at or below the State median income level. As a result, the City's efforts

to wipe out blight actually encourage homelessness which is a problem in and of itself in the region.

Before this Committee acts on a Bill such as Raised Bill No. 672 which will effect the housing opportunities for many regions in the State, it would seem to me that the Committee must, at a minimum, commission a study of the socio-economic impacts of the legislation. Without this kind of study to determine whether or not the statute warrants modification would be a disservice to the citizens of the State.

Even if you were to ignore the socio-economic impacts of the proposed Bill, the Bill itself is seriously flawed from a legal perspective.

In Section (g)(1), the language which the Bill seeks to add to the current statute requires a land use commission to determine that there is “more than a mere theoretical possibility, but not necessarily a likelihood, of a specific harm to a substantial public interest”. This standard is virtually impossible to determine. The commission will be charged with saying that the fear of harm which compels the commission to deny an application is more than just a possibility but not necessarily a probability. If you analyze this as a pendulum swinging between two points, at one end is possibility and at the other end is probability. Where does this Committee think the pendulum stops between these two points for a commission to make this determination? It is a standard which virtually defies both logic and

definition. It makes the consideration of a Planning and Zoning Commission on an affordable housing application somewhat of a farce. Ultimately it opens up the door for judicial determination of this standard and, quite honestly, that flies in the face of local land use control which is well established in the statutory and case law of land use since zoning was enabled in this State.

In Paragraph (3) the subject Bill provides that the commission “may legally consider” as a reason for denial, the denial of an application made to any other municipal agency. This is a very vague standard since it suggests that a Planning and Zoning Commission is subservient to the decision of any other municipal agency. The language of the statute, however, states that the Planning and Zoning Commission “may legally consider” without determining what “consideration” means. Currently the statutory scheme that is in effect for any land use application requires a Planning and Zoning Commission to give “due consideration” to the report of the agency having authority over Inland Wetlands and Watercourses. It does not link a denial of an inland wetlands permit directly to the denial by a Planning and Zoning Commission of any subdivision, special exception or site plan application including an application pursuant to 8-30g. There are a number of recent court decisions including a Connecticut Supreme Court decision which suggests that a Planning and Zoning Commission may not deny an affordable housing application on the grounds that an Inland Wetlands Commission did not

approve an application. The courts have consistently drawn a line between the responsibilities of a Planning and Zoning Commission and other agencies reviewing a project. For example, if an applicant applies to a municipal agency for a curb cut which is denied on a technicality that requires an applicant to go back and make a minor revision to a drawing, this cannot serve as the basis of a denial of an affordable housing application unless there is a specific harm to a substantial public interest based on that technical issue.

It seems to actually be insulting to members of local land use agencies who are volunteers spending long hours listening to public hearings and reviewing technical reports and drawings to say at the end of the process that their work is now subservient to decisions made by other municipal agencies. The Act as proposed is vague and somewhat misleading. It sets a standard for review of affordable housing applications which is more stringent than the standard of review applied to site plans, special exceptions and subdivisions generally. To the extent that Section 8-30g represents legislation aimed at a need to provide housing opportunities in the State of Connecticut based upon studies commissioned by the Legislature in previous years, to adopt this proposed Act would seriously thwart what has been accepted to be an important aspect of the housing policy of the State.

For all of these reasons Raised Bill No. 672 should not proceed forward as proposed. At a minimum a study should be commissioned to determine both the long range socio-economic impacts as well as the standards being established for local land use agency reviews. In the interim, no action should be taken to adopt this Bill as proposed. If amendments need to be made to Section 8-30g of the Statutes, careful consideration to the language being adopted is warranted. The proposed Bill does not accomplish this.

I thank you for your time and consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Neil R. Marcus', with a stylized flourish at the end.

Neil R. Marcus