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H.B. 5240 -- Exclusion of environmentally regulated areas from the Affordable Housing Appeals Procedure (8-30g)

Environment Committee Public Hearing – March 1, 2010
Testimony of Raphael L. Podolsky

Recommended action: **REJECTION OF THE BILL**

The Affordable Housing Appeals Procedure (C.G.S. 8-30g) is a critically important zoning statute that helps make it possible to build affordable housing in suburban and outlying towns that would otherwise exclude it. Its existence is essential to the implementation of municipal obligations under the Zoning Enabling Act (C.G.S. 8-2), which requires that municipal zoning regulations "encourage the development of housing opportunities, including opportunities for multifamily dwellings" for residents of the town and the region and that they "promote housing choice and economic diversity in housing, including housing for both low and moderate income households." The act does not guarantee that any affordable housing application will be approved but rather changes the way in which the need for affordable housing is balanced against other legitimate non-housing factors.

H.B. 5240 would make 8-30g unavailable in what it calls "an area where local, state or federal regulations intended to protect the natural environment or natural resources prohibit or substantially limit any development." **This proposal is both unnecessary and undesirable for at least the following reasons:**

- * Most environmental matters are not covered by 8-30g The Affordable Housing Appeals Procedure applies only to decisions of zoning and planning commissions. It cannot be the basis of an appeal from decisions of other agencies. Thus, C.G.S. 8-30g does not apply to hearings before wetlands or conservation commissions, to permits required from DEP or health departments, or to environmental regulations or orders of any other agency.
- * H.B. 5240 openly discriminates against housing because it is affordable Why does this absolute ban apply only if the housing is "affordable"? On what basis do we believe that housing is a greater environmental threat because of its affordability? Wetlands commissions permit development all the time. Why would we want to prohibit the use of the Affordable Housing Appeals Procedure in areas where environmental agencies have approved the development?

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- * C.G.S. 8-30g already takes environmental concerns into consideration
- * C.G.S. 8-30g itself requires the Superior Court to balance the need for affordable housing against "substantial public interests in health, safety or other matters which the commission may legally consider." There is no question that environmental matters are covered. As long as a matter is within the scope of a zoning or planning commission, it can be considered in an 8-30g appeal.
- * The courts have plainly recognized these principles in construing 8-30g For example, in *Christian Activities Council v. Town Council of Glastonbury*, 249 Conn. 566 (1999), the Connecticut Supreme Court explicitly held that open space needs can outweigh the need for affordable housing under the statute. Trial courts have sustained environmental grounds for rejecting an 8-30g proposal in numerous cases, including *Indian River Associates v. North Branford PZC*, 1992 WL 108763 (1992) (environmental impact, open space, waste disposal); *Greene v. Ridgefield PZC*, 1993 WL 7560 (1993) (wetlands requirements); *United Progress, Inc. v. Stonington PZC*, 1994 WL 76803 (1994) (coastal flooding); and *Landworks Development LLC v. Farmington PZC*, 2002 WL 377210 (2002) (impact on vernal pool within wetlands area).
- * The physical areas excluded by H.B. 5240 are enormous It excludes any area where any government regulations intended to protect the natural environment or natural resources substantially limit development. Virtually all buildable areas are subject to some form of development-limiting environmentally-protective regulation. This bill would effectively exclude nearly the entire state from 8-30g.

We urge you to reject this bill.