



OLR RESEARCH REPORT

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AFFORDABLE HOUSING APPEALS CASES

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You asked for a discussion of the disposition of proposals to develop affordable housing pursuant to [CGS § 8-30g](#). You also wanted to know of towns where such applications are pending. OLR report [2013-R-0002](#) addresses several related questions. OLR Report [2008-R-0055](#) describes many of the cases discussed below in greater detail.

SUMMARY

No entity in the state regularly tracks applications for developments pursuant to the affordable housing appeals procedure ([CGS § 8-30g](#)) and the information on the disposition of such applications is limited. We present data on cases in 29 towns from 1992 to present where the local zoning or planning commission (1) denied or approved an application with conditions and the developer appealed or (2) approved an application and an abutter or other neighbor appealed. We have limited data for cases where (1) the town approved an application that was not appealed by abutters or other neighbors or (2) the town denied an application and the developer chose not to appeal.

In a February 6, 2007 letter to the Housing Committee, Matthew Ranelli, an attorney who practices extensively in this area, estimated that between 1992 and 2006 there had been 144 judicial decisions regarding 98 proposed [§ 8-30g](#) developments. In approximately 70% of the cases, the applicant (developer) prevailed. Similarly, Raphael Podalsky of the Connecticut Legal Assistance Resource [estimated](#) in 2008 that towns

“win” about one-third of [§ 8-30g](#) cases. Ranelli believes that the proportion of cases that developers have won has not changed significantly in recent years.

There are a number of pending [§ 8-30g](#) applications. For example, Ridgefield is reviewing two developments, one for 8 units, and one for 12 units, the latter located above businesses. Other towns that received applications in 2012 that we may be currently pending include Ledyard, New Canaan, Old Saybrook, and Stonington.

INTRODUCTION

No entity tracks [§ 8-30g](#) applications or their disposition. But when a decision is appealed and the resulting court case is often reported. In preparing this report, we contacted the Connecticut Chapter of the American Planning Association (the professional organization for town planners) as well as several attorneys who routinely handle [§ 8-30g](#) applications. While we were able to get information regarding a large number of applications, this information is not exhaustive.

Applications for [§ 8-30g](#) developments are often multi-faceted. Developers sometimes seek the establishment of new types of zones and the re-zoning of their properties, as well as approval of their specific proposals. Applications can require action by wetland commissions as well as planning and zoning commissions.

Similarly, decisions by local commissions are often nuanced. It is common for commissions to approve some, but not all aspects of an application. For example, commissions often permit substantially fewer units than the applicant desires. Commissions can also approve applications with conditions, which can substantially affect the economic viability of an application.

Finally, courts have a wide range of options in responding to appeals by developers. In addition to simply sustaining or rejecting an appeal, a court can remand a case to the municipality for further consideration or require the municipality to approve an application subject to specific conditions.

CONTESTED CASES

Table 1 presents key facts in 55 [§ 8-30g](#) cases that were appealed between 1992 and the present, in most cases by the developer. We include citations in those cases that went to the Appellate or Supreme Court. In a few cases, an abutter or other neighbor appealed a commission's approval of an application.

The cases come from 28 municipalities, mostly suburbs. The size of the proposed developments range from three to over 300 units. In several cases, the applications were subject to extensive litigation, with the developer modifying and resubmitting its application.

Table 1: Litigated Affordable Housing Appeals Cases

<i>Town (year)</i>	<i>Units in development</i>	<i>Town Action</i>	<i>Court action</i>
Andover (1994)	14	Denial	Trial court ruled for developer on most issues, remanded one issue to the town
Avon (1996)	45	Denial	Trial court ruled for developer on most issues, but ordered town to approve permit after making changes to address pedestrian safety concerns
Berlin (1995)	30	Denial	Trial court ruled in favor of developer, Appellate Court affirmed (37 Conn. App. 303)
Bridgewater (1999)	35	Denial	Trial court ruled for town
Bridgewater (2005)		Denial of proposed subdivision plan	Trial court ruled for developer, but issued three orders to developer regarding issues raised by the town; Supreme Court affirmed decision when the town appealed (273 Conn. 573)
Canton (1996)		Approval	Trial court ruled for town, rejecting an appeal by a neighbor
Danbury (1995)	102	Denial	Trial court ruled for developer but remanded to town to allow it to impose reasonable conditions. Town appealed and Supreme Court affirmed trial court's decision (232 Conn. 122)

Table 1 (continued)

Town (year)	Units in development	Town Action	Court action
Darien (2012) (there were previous applications from the same developer)	16	Denial	Trial court ruled in favor of developer
Durham (1995)		Denial of proposed zone change	Trial court ruled for developer
Farmington (1994)	92	Approval	Trial court ruled in favor of town, rejecting appeal by abutters
Farmington (1994)	267	Denial	Trial court ruled in favor of developer, but directed town to modify the application as suggested by the developer to address one of its concerns
Farmington (1995)	34	Approval	Trial court ruled in favor of town, rejecting appeal by abutters
Farmington (2002)	404	Denial	Trial court ruled for town
Glastonbury (1996)	28	Denial	Trial court ruled for developer, ordered town to approve application with conditions
Glastonbury (1999)	26	Denial	Trial court upheld town, Supreme Court affirmed (249 Conn. 566)
Greenwich (2001)	92	Denial	Trial court held for the developer, Supreme Court affirmed in part, but held that trial court improperly determined that the town had not stated its reasons for denying the application and remanded the case. (256 Conn. 674)
Greenwich (2002)	8	Denial	Trial court ruled for developer, but required developer and town to comply with a previously agreed upon stipulation
Killingly (1995)	8	Denial	Trial court ruled in favor of developer
Milford (2001)		Denial	Trial court ruled for town, Appellate Court affirmed (66 Conn. App. 631)
Milford (2002)	248	Denial	Trial court upheld town, Supreme Court held that trial court had improperly dismissed developer's appeal (259 Conn. 675)
Milford (2011)	28	Approval with conditions	Trial court ruled for developer appealing the conditions

Table 1 (continued)

Town (year)	Units in development	Town Action	Court action
Monroe (2002)	31	Denial	Trial court ruled for developer, but imposed 11 revisions and modifications on proposal
New Canaan (1996)		Subdivision application denial	Trial court ruled for developer, Appellate Court affirmed (42 Conn. App. 94 cert. denied 239. Conn. 914)
Newington (1996)	128	Approval with conditions	Trial court struck down one condition, remanded case to town to reexamine another
Newtown (1999)	96	Denial	Trial court ruled for town
Newtown (2010)	26	Denial	Trial court ruled for developer and remanded case to town for approval subject to modifications, Appellate Court affirmed (125 Conn. App. 665)
North Branford (1992)	145-170	Denial	Trial court ruled for town
North Branford (1993)	23	Denial	Trial court ruled for developer
North Branford (1993)		Zoning amendment adoption	Trial court ruled that developer failed to prove he was aggrieved by the amendment
North Branford (1996)	40	Denial	Trial court ruled for developer, Appellate Court affirmed (37 Conn. App. 788)
North Haven (1999)	20	Denial	Trial court ruled for developer
North Haven (2010)	396	Denial	Trial court ruled for developer and ordered town to approve project subject to conditions. Appellate Court affirmed (124 Conn. App. 379)
Orange (1993)	86	Denial	Trial court ruled for town
Orange (2000)	n.a.	Denial	Trial court ruled for developer, subject to certain conditions; town imposed additional conditions, some of which the court found to be invalid; trial court ordered town to strike those conditions, town appealed the order, and the Supreme Court upheld the trial court's order (260 Conn. 232)
Ridgefield (1993)	16	Denial	Trial court ruled for town

Table 1 (continued)

Town (year)	Units in development	Town Action	Court action
Ridgefield (2006)	n.a.	Denial	Trial court ruled for developer
Ridgefield (2012)	389	Approval with conditions	Trial court largely ruled in favor of developer, but upheld condition banning building in watershed land; developer appealed the prohibition; Appellate Court reversed and directed the town to approve the proposal subject to reasonable terms and conditions (139 Conn. App. 256)
Simsbury (1996)	115	Denial	Trial court ruled for town
Simsbury (2004)	102	Denial of subdivision plan, zoning amendment, and site plan	Trial court ruled for developer, imposing conditions on the development; Supreme Court reversed with regard to subdivision and site plans (271 Conn. 1, 271 Conn. 41)
Southington (1993)	35	Denial	Trial court ruled for developer
Southington (2009)	219	Denial	Trial court ruled for developer
Stonington (1994)	n.a.	Denial of proposed zoning amendment	Trial court ruled for town
Stratford (1998)	48	Denial	Trial court ruled for developer
Stratford (2000)	43	Denial	Trial court ruled for town, Appellate Court reversed (59 Conn. App. 608)
Stratford (2007)	160	Denial	Trial court largely ruled for developer, but remanded one issue to town; developer appealed and Supreme Court dismissed for lack of subject matter jurisdiction
Stratford (2009)	146	Denial	Trial court ruled for developer on two issues, but for the town on one, thereby blocking development
Stratford (2011) (appeal of the above case)	146	Denial	Trial court ruled for town, both parties appealed and Appellate Court ruled for developer (130 Conn. 36)

Table 1 (continued)

<i>Town (year)</i>	<i>Units in development</i>	<i>Town Action</i>	<i>Court action</i>
Suffield (1995)	52	Denial	Trial court rejected most of the town's rationale for denying the application, but remanded case to the town to re-examine two issues
Trumbull (1992)	n.a.	Denial	Trial court remanded case to town for further action
Trumbull (1996)	n.a.	Denial of proposed zone change	Trial court ruled for developer
Trumbull (1999)	n.a.	Approval	Trial court ruled for town, rejecting appeal by abutter
Wes Hartford (1994)	10	Denial	Trial court rule for developer, supreme court affirmed (228 Conn. 498)
Weston (2002)	n.a.	Denial	Trial court ruled for town
Wilton (2001)	113	Denial	Trial court ruled for town
Wilton (2007)	100	Denial	Trial court ruled for developer, Supreme Court affirmed (103 Conn. 842)

n.a. — not applicable (e.g., proposed rezoning without a specific proposed development) or information not available

In addition to the cases described in the table, developers in Monroe and Oxford appealed decisions denying and conditionally approving their applications, respectively, but subsequently settled with the towns approving somewhat smaller developments.

In September 2012, the Fairfield Planning and Zoning Commission denied an application for a three-unit [§ 8-30g](#) development, and the developer has appealed. The denial of two proposals in Darien (by the same developer) and one in Easton are also currently under appeal.

UNCONTESTED CASES

In a number of cases, towns have approved § 8-30g applications that abutters or other neighbors have not appealed. Ridgefield has approved six projects from 2008 to the present, ranging in size from three to 43 units. Other towns that have approved developments that have not been appealed include Bethel (six, 45, and 115 units), Canton (40 units,

although this project was not developed), Darien (35 units), Madison (32 units), Middlebury (126 units), Newtown (34 units), and Wallingford (80 units). Conversely, in 2005 the developer Avalon Bay did not appeal West Haven's decision denying it a zone change from industrial to multi-family residence as part of a [§ 8-30g](#) application and chose not to appeal the denial.

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