



February 05, 2015

re: Proposed HB No 6128

Fairfielders Protecting Land and Neighborhoods (FairPLAN) urges the passage of proposed HB No 6128 which in part states “(4) set-aside developments shall be prohibited in all flood zones.” Under current regulations, 8-30g can be used by developers to build in areas of serious hazard due to flooding.

Building in flood zones has already happened in Fairfield. A recently constructed 8-30g apartment building sits in a “Special Flood Hazard Area,” one of the highest risk areas as defined by FEMA. This location is at the lowest spot in the Rooster River flood plain. This apartment building was constructed after denial of a zoning application and a subsequent settlement during the 8-30g appeals process. A second apartment building in the same flood zone is currently under 8-30g appeals after a health and safety denial of a zoning application.

In 2007 at a hearing on proposed House Bill HB 5454, Connecticut State Representatives Kim Fawcett and Tom Drew testified that, ”The [Rooster] river causes flooding during periods of heavy rainfall, and combines with polluted sewer runoff, posing a significant health hazard to area residents. As a result of the continuing flooding problem, town officials have had to evacuate area residents as recently as spring 2006.”

HUD’s standards for site development require a site that is “adequate in size, exposure and contour [in a] neighborhood...which is not seriously detrimental to family life or in which ...undesirable conditions predominate.” 8-30g developments in flood zones do not conform to HUD standards because the risk of flooding is an undesirable and dangerous condition.

Risks to health and safety from flooding include:

- \* drowning and hypothermia (for residents and first responders),
- \* post-storm hazards from utility outages, including electrocution,
- \* exposure to secondary hazards including contaminated drinking water,

contact with contaminated floodwaters, and mold and moisture in housing,  
\* population displacement and disruption of services including the need for mass evacuation,  
\* mental health effects from traumatic or stressful experiences during and after the floods.

Under current regulations, a judge in an 8-30g appeals case can determine that construction in a flood zone is permissible to fulfill the need for affordable housing. Such judicial discretion is improper since it creates the necessity of balancing the need for affordable housing versus serious risks to health and safety, risks that under HUD guidelines prohibit construction in such an area. Since the 8-30g statute already allows denial of an appeal in cases of demonstrated health and safety risks, the legislative intent of the drafters of 8-30g should be further specified by adding a clause to 8-30g stating, “set-aside developments shall be prohibited in all flood zones as defined by FEMA as Zones A through A-99 and V through V-30. Any proposed development under 8-30g in an area designated by FEMA as Zone D must submit a properly completed flood hazard analysis with any local applications for development.”

FairPLAN believes that an additional clause should be added to HB No 6128 prohibiting construction of housing under 8-30g in any regulated Inland Wetlands area as defined by Connecticut’s *Inland Wetlands and Watercourses Act*. The Act notes that damage to and loss of wetlands “will adversely affect, if not entirely eliminate, the value of such wetlands as sources of nutrients to finfish, crustacea and shellfish of significant economic value...loss or despoliation will destroy such wetlands as habitats for plants and animals of significant economic value and will eliminate or substantially reduce marine commerce, recreation and aesthetic enjoyment...loss or despoliation will, in most cases, disturb the natural ability of tidal wetlands to reduce flood damage and adversely affect the public health and welfare... [and]loss or despoliation will substantially reduce the capacity of wetlands to absorb silt and will thus result in the increased silting of channels and harbor areas to the detriment of free navigation.” These risks are very real in Fairfield. During Super Storm Sandy, for instance, our wetlands provided critical flood mitigation.

Judicial interpretations in 8-30g appeals have permitted construction in Inland Wetlands regulated areas. We believe that such construction violates the *Inland Wetlands and Watercourses Act* and poses a significant hazard to the health and safety of Connecticut residents. Since the 8-30g statute already allows denial of an appeal in cases of demonstrated health and safety risks, the legislative intent of the drafters of 8-30g should be further specified by adding a clause to 8-30g stating, “set-aside developments shall be prohibited in all areas designated as

Inland Wetlands regulated areas as defined in the *Inland Wetlands and Watercourses Act*.”

FairPLAN also requests that a clause be added to HB No 6128 prohibiting construction of housing under 8-30g in any watershed area serving as an active source of drinking water supply. Connecticut statutes and regulations including CGS Section 25-32 and 22a-354a through bb and RCSA Sections 22a-354i-1 through 10 define and protect watersheds. Watersheds are critical to the health and safety of Connecticut residents as sources of drinking water. We do not believe that it was the legislative intent of 8-30g to permit judges to subordinate watershed protection to the development of affordable housing. Since the 8-30g statute already allows denial of an appeal in cases of demonstrated health and safety risks, the legislative intent of the drafters of 8-30g should be further specified by adding a clause to 8-30g stating, “set-aside developments shall be prohibited in all areas designated as watersheds serving as an active source of drinking water supply as defined in Connecticut statutes and regulations.”

FairPLAN supports the need for affordable housing in Connecticut, but we hope that the legislative intent of 8-30g to prohibit housing that would adversely impact the health and safety of Connecticut residents will be further codified by adding the three classes specified above. These clauses add important concrete protections to health and safety without adversely impacting the development of affordable housing.

Sincerely,



Alexis Harrison  
Chair, Fairfielders Protecting Land and Neighborhoods (FairPLAN)

**FairfieldPLAN's mission is to support open spaces, natural resources and the character of our neighborhoods, by -**

- supporting positive government action through good laws, regulations and land use decisions**
- promoting appropriate development to achieve both economic and environmental health**
- being a resource for local groups by providing education, support and advocacy**
- encouraging and sponsoring planning initiatives**