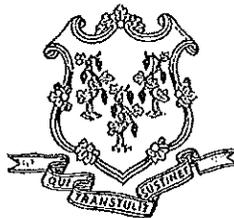


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**Testimony to the Housing Committee**

**Raised House Bill 5363 An Act Concerning the Affordable Housing Land Use Appeals Procedure**

**March 1, 2016**

Good Afternoon Chairman Winfield, Chairman Butler and members of the Housing Committee. For the record, I am Gayle Slossberg, Senator from the 14<sup>th</sup> District representing Milford, Orange, parts of West Haven and Woodbridge. I am here to offer testimony on **HB 5363, An Act Concerning the Affordable Housing Land Use Appeals Procedure**. My testimony consists of both concerns regarding the proposed language and proposed language for amendment that I believe will provide reasonable fairness to the Affordable Housing Appeals Procedure (the "Procedure") without undermining the integrity of the Affordable Housing Land Use Appeals Procedure Act (the "Act" or "8-30(g)").

As some of you are aware, the Act more commonly referred to as 8-30(g) has been a source of significant concern in my district. Before I go into the legislative details, my constituents have asked me to share with you some information about our community. The people of Milford are a warm, caring community. We welcome all people and recognize the need for housing for all people. We are a blue collar, working class town. Most of our teachers, firefighters and police officers live in Milford. We have multiple public housing facilities, section 8 housing, housing for low-income families – some deed restricted, some not. Contrary to public perception, we have approved a number of affordable housing developments and they have been built or are in the process. We do not have exclusionary zoning laws. We have multi family, high density and even affordable housing zones. We are the only community in the State that I am aware of that fought alongside with nearly 200 low income residents in their battle against a global corporate for profit developer who demolished their mobile homes. We came together as a City and a community working with a nonprofit developer, found them land, zoned it for manufactured mobile homes and helped them build the finest, affordable park in the State of Connecticut. It is something we are very proud of. Our housing stock is approximately 30% affordable by market rates. By stricter 8-30(g) standards, our percentage is somewhere between 6 and 7% which doesn't include our

manufactured mobile home park. We are not talking about a 1% community that has little to no affordable housing.

We are here today to ask for your help. Despite the noble purpose of the Act, it has been hijacked by greedy developers who care nothing for providing affordable housing. Instead, they misuse the Act to cram higher density projects onto tiny lots for the sole purpose of turning a profit. One developer bragged to me that he was filing an 8-30(g) application and, with the certificate in hand (which he characterized as a slam dunk) he would negotiate with the City to cram 13 units on a lot that was zoned only for 9 units. Thus, in my community, which has approved a number of new affordable housing proposals and has even zoned areas as welcoming to high density multifamily housing that would qualify as affordable, we have been deluged by greedy developers who merely use the statute to abuse local zoning. Thus, the sad fact is that the balance that our State intended between two important public policies -- i.e. encouraging affordable housing and encouraging smart planning -- has been disrupted and perverted by these greedy developers. The purpose of my proposal is to restore balance and basic fairness in the system.

To be clear, the language before you in HB 5363 does neither. In fact, the language before you will exasperate the problem. That is why I strongly oppose the language before you and instead propose some very modest alternative language by way of amendment that will actually fix the affordable housing appeals procedure, make it fair and reasonable, and restore the faith that we can have a system that encourages affordable housing but in a way that is consistent with our towns' plans of conservation and development. The language I propose will also ensure that the Statute is applied in accordance with its original intent. Indeed, the moratorium provisions have been applied in a manner that is in fact contrary to other sections of the Act, in a way that has unlawfully favored some communities over others.

As discussed more fully below, I therefore propose four basic modifications to the 8-30(g) procedure to act as checks and balances to abuse, and to restore fairness in the application of the Statute across our State, as follows: (1) prohibit application of the act on parcels of one acre or less; (2) incent communities to increase affordable housing stock by setting a more attainable threshold for ALL communities; (3) recognize the need for affordable elderly housing; (4) clarify certain provisions relating to the moratorium.

#### **I. HB 5363, LIKE LAST YEAR'S BILL, WILL INCREASE THE DENSITY OF HOUSING PROJECTS AND MUST BE AMENDED**

One of the biggest concerns my constituents express is the high density of the proposals in relation to the neighborhood in which it is proposed. The tendency of these proposals is to be on small plots of land, in single-family neighborhoods. In order to maximize profit, the developer builds a high density apartment complex that towers over the neighborhood and sticks out like a sore thumb.

HB 5363, lines 190-192 states that the Procedure shall not be applicable if "(1) the proposed development which is the subject of the application contains less than four affordable dwelling units,". While the concept of limiting 8-30(g) to only those proposals that build 5 or more affordable housing units is good, the **effect of this provision is to increase the density of the proposal**. Since there is no limit as to how dense a proposal can be, (it can be three stories high, four stories, ten stories; it can be built to the edges of the property etc.) a developer who wants to build on a particular parcel who cannot build four affordable housing units, will simply build five or more. They can and will add a floor to a building or add a building to the proposal overall! **As written, this provision will make things worse.**

Instead, I would recommend that the language be amended so that the *Procedure shall not be applicable if the proposed development which is the subject of the application is on one acre or less*. My proposed language alleviates the great harm that neighbors experience with high density projects without losing any significant number of affordable housing stock.

## **II. IF YOU ARE REDUCING THE THRESHOLD REQUIRED FOR A MORATORIUM, YOU MUST DO SO FOR ALL COMMUNITIES SUBJECT TO THE PROCEDURE**

HB 5636, line 247, reduces the threshold for 43 communities subject to the Act but leaves the very high threshold for all other communities. The proposed language reduces the threshold from 75 housing unit-equivalent points to 50, a 33% reduction. I am not aware of any rational basis to exempt certain towns and not others. If the premise is that our State needs affordable housing, we should not set one standard for some towns and a much higher standard for others. *If it is the will of the committee to reduce the threshold 33%, then you must reduce it for all communities that are subject to the Act.* **The language as drafted will increase the number of proposals in communities like mine without any rational basis for doing so.** Simply put, if more communities achieve a moratorium because they have a much lower threshold, there will be less potential places developers can go to use 8-30(g). Because my district and others like it will continue to have the highest threshold for achieving a moratorium and therefore be less likely to achieve a moratorium, they will become the most preferred locations for developers.

## **III. ELDERLY UNITS SHOULD RECEIVE ADDITIONAL POINTS REGARDLESS OF THE OVERALL PERCENT OF FAMILY VERSUS ELDERLY HOUSING**

Connecticut has the seventh oldest population in the Country. By 2030, 26% of population will be over 60. CHFA has recognized the need to address affordable housing for the elderly. (see CHFA Affordable Housing Market Inventory Study). As people seek to age in place, the need for affordable housing for the elderly will continue to grow. Our statutory framework should take this in to account and incent affordable elderly housing as well as family housing.

#### IV. THE PROVISION RELATING TO MORATORIUM POINT ACQUISITION NEEDS TO BE CLARIFIED AND STANDARDIZED

##### A. GOVERNMENT ASSISTED HOUSING SHOULD COUNT TOWARDS THE MORATORIUM THE SAME WAY IT COUNTS TOWARD THE EXEMPTION

The purpose of the moratorium provision when enacted was to "create a workable moratorium based on where there's been substantial affordable housing activity." Select Committee on Housing, February 15, 2009.

Unfortunately, under current interpretations of the Act, a much stricter standard has been applied to government assisted housing to qualify for moratorium points, than the standard for exemption under the Act. This interpretation turns the Act on its head, undermines reasonable efforts at increasing affordable housing stock and creates an overly complicated and unfair system.

Under current interpretations of the Act, there are two standards for what housing is considered "affordable". To qualify for a complete exemption from the Act, municipalities may count, among other things, any "assisted housing" which is defined as "housing which is receiving or will receive financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing..." C.G.S 8-30(g)1(3). Low income is generally defined as below 80% of the area median income. Moderate income is generally defined as 80-120% of the area median income. This is commonly referred to as "government assisted housing". In order to qualify for a complete exemption, a municipality can count both low and moderate income housing AND there are no requirements for deed restrictions. Based almost entirely on this category of housing, many communities are exempt and have been exempt from the 8-30(g) procedure since the inception of the Act.

The Act recognized that government assisted housing for low *and* moderate income families is a valuable and necessary tool for developing the affordable housing stock that the State is seeking. It also exempts those communities with significant amounts of government assisted housing because those communities have already borne a large "burden" of the affordable housing stock. (See General Assembly House Record, Representative Flaherty's remarks on the floor, April 28, 2000).

Contrast that with the interpreted requirements to achieve a moratorium. Unfortunately and improperly, government assisted housing has been interpreted to NOT qualify for points towards a moratorium UNLESS they are *both* deed restricted and the income qualifications are less than 80% of the area median income. This interpretation is simply wrong. It is inconsistent with the legislative intent of the Act when the moratorium was passed and undermines the purpose of the Act.

A finding that government assisted units do not count towards a moratorium is at odds with the legislation that actually created the moratorium. In 2000, the General

Assembly passed legislation to create the moratorium. The language of the law clearly includes government assisted units in the moratorium point count. See C.G.S. 8-30(g)1(l)(4)(A) However, the point structure only refers to set-aside developments and is silent as to government assisted units. While the point structure gives points to unrestricted *market rate* units in a set-aside development, it would not make sense that restricted government assisted units, even if restricted at a higher level, would receive no points at all.

Given the silence in the law, it is helpful to review the legislative history. From the debate on the house floor, it is clear that the proponents of the legislation intended to include government assisted units in the counts for both the exemption AND the moratorium. Representative Flaherty, the chief proponent of the amendment, discussed government assisted housing at length on the floor of the House. He spoke about the value of government assisted housing. He never stated that government assisted units do not qualify for moratorium points, nor did he suggest that they need to be deed restricted in any way. Government assisted units are income restricted by definition and there is oversight to ensure that they remain meet strict guidelines. There is no dispute they are counted towards the exemption. They must be counted towards a moratorium in the same way. To suggest otherwise is folly. That would mean that a town could build luxury housing with their own public funds, not deed restrict in any way and qualify for an exemption but not for a moratorium. This interpretation would turn the Act on its head.

Not surprisingly, in 2000 the Office Legislative Research in summarizing the moratorium *also found that government assisted units should be counted towards the moratorium. Specifically,*

**Under the act, units that became affordable July 1, 1990 count toward a moratorium if they were:**

1. built with government funds,
2. built with private funds and occupied by tenants receiving state or federal rent subsidies,
3. subject to deeds restricting their sale or rental to low- and moderate-income people for at least 40 years, *or*
4. developed under the appeals procedure

2000 OLR PA Summary Book. It is clear that the General Assembly always expected government assisted units to qualify for moratorium points without any additional restrictions.

Even if the original moratorium act did not establish that government assisted housing units should qualify for moratorium points, good policy demands that we count them towards a moratorium. Points are awarded in order to encourage certain types of affordable housing. To suggest that, as a policy, we would NOT want to encourage government assisted housing is nonsensical and undermines the purpose of the Act. The central government program in our state to develop

affordable housing is the Connecticut Housing Finance Authority ("CHFA"). According to the most recent Connecticut Affordable Housing Market Inventory prepared for CHFA, the highest need for affordable home ownership housing is at income levels between 80-120% of the area median income. *More than half* of the total market for CHFA's affordable housing programs are renter households at 80-120% of area median income who cannot afford to purchase housing. Thus, while CHFA is focused on increasing homeownership for families at 80-120% of the area median income, especially in suburban towns, the current interpretation of the law does not recognize the documented need and value in those housing opportunities.

If the state wants to encourage affordable housing in the way that it is clearly most needed, then it must count government assisted housing towards a moratorium.

### **B. RATIFY THAT IN-LAW ACCESSORY APARTMENTS AND MANUFACTURED MOBILE HOME PARKS ARE COUNTED TOWARDS THE MORATORIUM**

In 2002, the General Assembly amended 8-30(g) to include in-law accessory apartments and manufactured mobile home parks under the provisions of the Act. In 2005, the town of Trumbull applied for a moratorium based in part on affordable in-law accessory apartments. Developers opposed the moratorium on the ground that in-law accessory apartments and manufactured mobile home parks were not included in the moratorium provision. An opinion was sought to clarify the law. Then Attorney General Richard Blumenthal found that although the law was not dispositive, he recommended that the Department of Economic and Community Development grant a provisional moratorium until the legislature acted otherwise. Since 2005, the Legislature has not sought to remove in-law accessory apartments or manufactured mobile home parks from the moratorium framework. It is time to ratify that decision.

Furthermore, Trumbull obtained a moratorium with a 10 year deed restriction but only a five year special permit that could only be renewed upon approval from the Planning and Zoning Commission. That five year special permit made it possible that units that were the basis for the provisional moratorium would actually not meet the required 10 year deed restriction requirement.

In Milford, we are proud to be home to Ryder Woods, a 174 affordable housing manufactured mobile home park where at least 75% of all the units are rented to families at 80% or less of the area median income and no more than 25% of their income is used for housing costs. The City of Milford stood with the residents of the park when a large for profit developer sought to demolish their old park. While the original park was sold and demolished, through the good work of the City and the residents, we were able to create a special zone for a new manufactured mobile home park that is deed restricted and beautiful. This is a great example of what communities should be doing to encourage and support affordable housing. *It*

*should be crystal clear that the Legislature supports this affordable housing activity and is included in the point count towards a moratorium.*

**C. HOUSING DEVELOPMENTS THAT ARE AGE RESTRICTED AND PROVIDE EQUAL OPPORTUNITY HOUSING TO NON-ELDERLY DISABLED RESIDENTS SHOULD HAVE POINTS APPORTIONED EQUALLY BETWEEN FAMILY AND ELDERLY**

Many of our public housing developments provide housing for both seniors and non-elderly disabled as is required by federal law. Accordingly, they house both seniors and families. In those developments, we should clarify that moratorium points are apportioned equally between elderly and family categories.

**V. WE MUST REDIRECT EXISTING INCENTIVE PROGRAMS TO SUPPORT CONVERSION OF MARKET RATE UNITS TO AFFORDABLE UNITS**

In many towns, the density of existing housing stock is already approaching the point where no land is left on which to develop. With so many houses in foreclosure and much of the existing housing stock aging, we should use some of the existing funding to incent the conversion of market rate units to affordable. We can do this by reimbursing towns that provide tax credits to landlords and homeowners and/or give grants to private landlords of older buildings in need of upgrades who are willing to convert units to affordable. Under either system, we will increase the number of affordable units and improve the quality of the housing stock as well.

**VI. THE AFFORDABLE HOUSING APPEALS PROCEDURE MUST GIVE A VOICE TO THE AVERAGE CITIZEN WITH KNOWLEDGE OF THE PROPOSED SITE**

Under current law, the Planning and Zoning Commission hears all the testimony first hand from the public and the applicant. A record is created and if the project is denied and appealed, the case goes to the Court. The Court conducts a plenary review which means the Court reviews the case without deference to the Planning and Zoning Commission's decision. During the Commission's process, members of the public who have significant personal knowledge of the site and its potential impact of safety, health and other matters bring their personal knowledge to the hearing. The Commission as finder of fact, hears the testimony and decides if it is credible. On the other side, the for profit developer always has an army of experts who, sometimes without ever setting foot on a site, offer testimony, reports and "expert" opinions as to the impact of the proposed development. When the Commission bases its decision on lay testimony that they believe is credible based on the speakers' personal knowledge, the Court should be required to give deference to that testimony. At the very least, it should have the same weight as high priced experts employed by the developer who are more sophisticated in their presentation.

This law, while well intentioned, has so tipped the scales in favor of profit seeking developers. We must hear the voices of the residents of our communities and not be seduced by the fancy army of highly paid experts that seek to find every opportunity to make a buck. Please give the people back their voices.

#### **VII. COMMISSION A NEW INDEPENDENT AFFORDABLE HOUSING NEEDS ASSESSMENT**

When this statute was created in 1989, the purpose was clear. It was as a result of the 1980's housing boom when the need for affordable housing was significant. Local towns enacted restrictive zoning laws that kept people from moving up and in to the communities where they were working. In the words of Representative Caruso,

the Affordable Housing Appeals Procedure "was done because of all of the research that showed the extremely restrictive zoning regulations that existed within suburban communities, small towns, rural communities throughout the State of Connecticut...As a result of those restrictive regulations, the Legislature stepped forward and said that we had to provide opportunities for people to move up, and for people to have the opportunity to purchase housing in suburban communities..."

House of Representatives, May 1, 2002.

Since then, we have continued under the same statutory framework even though we have experienced the housing market collapse, unprecedented foreclosures, the Great Recession, a migration of poverty to the suburbs, an increase in population in the cities (which are exempt from the Act) and massive change in our State. We must not continue to operate as if nothing has changed. It is time to look at our statewide housing needs and make decisions based on the facts of the new realities.

Thank you for the opportunity to present this testimony. I look forward to working with the committee to restore balance and basic fairness to the system.

Respectfully Submitted,



Gayle S. Slossberg