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TESTIMONY BEFORE THE HOUSING COMMITTEE

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Good morning Senator Slossberg, Senator Hwang, Representative Butler and honorable members of the Housing Committee. My name is Evonne Klein and I am the Commissioner of the Department of Housing (DOH). Thank you for the opportunity to appear before you regarding several important bills that impact affordable housing development and the constituents we serve.

My testimony today will be on a number of bills that would amend the Affordable Housing Land Use Appeals Procedure, otherwise known as Connecticut General Statute (C.G.S.) 8-30g. This statute is essential in implementing C.G.S. 8-2, the Zoning Enabling Act, which requires that all municipal zoning regulations, “encourage the development of housing opportunities,” including opportunities for multi-family dwellings and that they “promote housing choice and economic diversity in housing, including housing for both low and moderate income households.” C.G.S. 8-30g exists as the primary mechanism to combat exclusionary zoning. It also encourages private developers to build affordable housing, without the need for investment from a government source. This statute has been an effective instrument in the development and expansion of Connecticut’s affordable housing stock. We know that there are currently over 5,000 units of deed-restricted affordable housing in the State of Connecticut that did not receive funding from any government entity, most of which were created after C.G.S. 8-30g was originally established.

In Connecticut we have much to be proud of when we talk about our progress in preventing and ending homelessness as well as our progress in preserving, rehabilitating and creating affordable housing. Since 2011, together with CHFA, we have built, have under construction, or have funding commitments in place for nearly 20,000 units of housing. Approximately, 18,500 of those units have restrictions which require them to be affordable. In the past 3 years alone, we have made unprecedented progress in ending homelessness for our veterans and we are the only state to have matched every chronically homeless person with housing. Connecticut has been credited as being a national leader for these accomplishments. Yet, there is still more work to be done. Data from the 2015 United States Census shows that 49.1% of Connecticut’s population is rent burdened and that 30% of homeowners are housing cost burdened. When we say that someone is housing cost burdened, we use the HUD definition, which states “families who pay more than 30 percent of their income for housing are considered cost burdened and may have difficulty affording necessities such as food, clothing, transportation and medical care.” I think we have all heard personal stories, too often, about the tough choices people are forced to make. By providing housing choice, we as elected and appointed officials, are addressing this issue. We are changing perspectives and looking at this in terms of community development—vibrant communities are multi-generational and they are multi-generational because they have housing choice. These communities have the ability to attract and retain young people, including young families, which are a large part of our workforce. And housing choice gives seniors the option to stay in the community in which they’ve lived for 50 years or more.

In reviewing the legislative proposals before you today, please know that we are looking at these through the lens of their ability to increase the stock of affordable housing in our state, and how they may help us meet the needs of Connecticut residents, while still creating strong, vibrant communities. We maintain strong opposition to any statutory changes that would diminish our capacity to do so.

Committee Bill 535: AN ACT REVISING THE AFFORDABLE HOUSING LAND USE APPEALS PROCESS AND REQUIREMENTS FOR AFFORDABLE HOUSING APPLICATIONS AND OBTAINING A MUNICIPAL MORATORIUM:

DOH has several significant concerns and opposes the majority of changes proposed throughout this legislation. In this bill there are several proposals that would change the authority of local zoning boards and commissions, including historic district commissions that exist in certain municipalities, allowing them to prevent the appeal of a local affordable housing decision. There are also sections of this proposal that allow a municipality to deny an appeal by establishing minimum density requirements. DOH does not support any legislation or local ordinance that allows a municipality to prevent a developer from being able to appeal a zoning decision that would expand access to affordable housing. There are several proposals throughout this bill that would enact similar changes on the local level. DOH cannot support any of these changes, because their very nature seeks to establish statewide exclusionary zoning standards. Empowering local boards with the ability to *specifically* deny affordable housing applications at any point in the planning and zoning review process is exclusionary. While this would not change DOH's position on these proposals, we would ask the following question of this committee: Why is this local power not awarded to a commission in the same way so that it applies to market rate housing developments, or commercial developments? This appears to be a targeted attempt to limit the development of affordable housing. These proposed changes could be viewed as setting up a system of both economic and racial segregation. This would be an unfortunate step in the wrong direction for a state like Connecticut, when we have made so much meaningful progress towards building vibrant, inclusive communities with housing choice.

It is DOH's understanding that the state judicial branch will be submitting testimony regarding subsection (f) of this proposal, which would establish a three judge trial referee panel to review all appeals filed under C.G.S. 8-30g and would also empower local commission's with the ability to call certain witnesses in a court proceeding if they believe said witnesses have "credible personal knowledge of the proposed site" to be developed. As you know, these applications include, but are not limited to, studies by experts on traffic, health and safety, and the environment. The definition and determination of "credible personal knowledge of the proposed site" is unclear. I would like to note that community members do have the opportunity to appear locally before their planning and zoning commissions to testify as part of the public record.

DOH has concerns with proposed subsection (8)(k), as drafted. This section would prevent the affordable housing appeals process from being enacted if a developer owes any outstanding property taxes to a municipality. While we do not oppose the concept of collecting property taxes when they are owed, this is troubling because it is, again, establishing a requirement that only affordable housing applicants must meet—therefore, establishing another means or measure for denial. This is another form of exclusionary zoning because it specifically targets the production of affordable housing units and no other development.

DOH cannot support any part of this proposal that would allow units which are “approved” and not “completed” to count towards a moratorium or exemption from this statute. There have been cases in the past when a development is proposed, but ultimately never gets built for one reason or another. To count “approved” units would be a false representation of a town’s affordable housing stock.

DOH has concerns with all of the sections in this proposal which would change the point calculations towards receiving a moratorium or exemption under C.G.S. 8-30g. DOH does not believe these changes will help increase the stock of affordable housing in our state.

Section 2 has proposed new language that would require municipalities to adopt an affordable housing plan. DOH supports the idea that every municipality should have an affordable housing plan. It can, as you know, be adopted as part of a municipality’s Plan of Conservation and Development. This is an effective way to ensure a community thoughtfully increases their affordable housing stock. However, additional consideration would need to be taken with regard to this proposal as drafted, since it is very specific with what it would require to be included in an affordable housing plan. That being said, DOH does not support tying the existence of an affordable housing plan to the lowering of the threshold needed to achieve a moratorium, as defined in newly amended subsection (m)(4)(A). If a municipality establishes an affordable housing plan then they will already have the tools they need to adequately increase their affordable housing stock. An affordable housing plan signals to developers how that municipality is looking to develop their community and is a step in the right direction towards building more affordable housing.

DOH believes that adopting inclusionary zoning in accordance with 8-2i of the general statutes, is another effective tool—and I would add an essential tool—to ensure that municipalities are increasing their affordable housing stock. I am glad to see a concept along those lines outlined in Section 2. As many of the members of this committee may know, DOH has proposed to enact statewide inclusionary zoning this legislative session.

Section 4(c), which allows a municipality to establish a reasonable penalty for failure to submit certification required under C.G.S. 8-30h is an interesting concept. This type of action is usually in response to something not being done. Is it the concern of this Committee that there is a large failure to report?

Raised Bill 7057: AN ACT CONCERNING AFFORDABLE HOUSING:

This bill has similar components to Committee Bill 535, and DOH opposes the majority of changes proposed. I will reiterate that we oppose empowering any local zoning board with the authority to prevent a developer from filing an appeal under C.G.S. 8-30g as well as empowering a municipal board with the authority to deny only affordable housing applications based on setback requirements or the maintenance of “neighborhood context,” which can be construed as exclusionary. These are the same kinds of laws that were enacted early in the 20th century, which strongly promoted segregation among our towns and cities. We as a state must not be crafting policy that would turn back the progress we have worked so hard to achieve.

As stated above, DOH has concerns with all of the sections in this proposal which would change the point calculations for receiving a moratorium or exemption under C.G.S. 8-30g. DOH does not believe these changes will help increase the stock of affordable housing in our state.

DOH continues to be supportive of the concept of adopting an affordable housing plan and of adopting inclusionary zoning. However, additional consideration would need to be taken with regard to this proposal, as drafted, since it is very specific with what it would require to be included in an affordable housing plan. That being said, and I will reiterate from above, DOH does not support tying the existence of an affordable housing plan to the lowering of the threshold needed to achieve a moratorium, as defined in newly amended subsection (m)(4)(A). If a municipality establishes an affordable housing plan then they will already have the tools they need to adequately increase their affordable housing stock. An affordable housing plan signals to developers how that municipality is looking to develop their community and is a step in the right direction towards building more affordable housing.

Raised Bill 6880: AN ACT CONCERNING THE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE:

DOH has many of the same concerns with this proposal as stated for Committee Bill 535 and Raised Bill 7057. We do not support any changes to C.G.S 8-30g that would erode the creation of affordable housing units in the State of Connecticut. As such, we do not support any proposal to increase the number of points a municipality can receive, without actually building more affordable housing. This would include any additional category concerning “mobile manufactured homes” where the land is deed-restricted at the time of issuance, but is no longer deed-restricted in the present. We stand by the concept of affordable units counting towards a moratorium or an exemption, only if they currently have an affordable deed-restriction or covenant.

House Bills 5267, 5359, 5535, 6589, 6593, 6594, 6600, 6602, 6605, 6609, 6873, and 6879:

I stated previously that DOH does not support any proposed changes to C.G.S 8-30g that make it easier for a municipality to obtain a moratorium or an exemption from this statute, without having to build affordable housing. These proposals, while they are still in their concept form, remain vague and appear to amend the awarding of Housing Unit Equivalency (HUE) points. If the intent of these proposals is to raise specific point values beyond what is already defined in C.G.S 8-30g, then DOH opposes these concepts.

House Bill 5533: AN ACT CONCERNING THE REHABILITATION OF CERTAIN PROPERTIES:

DOH does not view this legislation as necessary, since deed-restricted affordable housing units that undergo a rehabilitation are already eligible for points under C.G.S. 8-30g. If the intent of this proposal is to allow non-deed restricted units to count under C.G.S 8-30g, then we oppose this legislation.

House Bill 5534: AN ACT CONCERNING MUNICIPALITIES AND AFFORDABLE HOUSING

This proposal is vague in its definition of “good faith effort” and DOH would not support the establishment of specific zones that are exempt from having to develop affordable housing. This proposal is the personification of my earlier concerns—it is exclusionary zoning.

House Bill 6168: AN ACT REDUCING THE PERCENTAGE FOR EXEMPTING MUNICIPALITIES FROM THE AFFORDABLE HOUSING APPEALS PROCEDURE:

We are strongly opposed to this proposal as it greatly lowers the threshold a municipality needs to receive an exemption under C.G.S. 8-30g from 10% to 2%. This would greatly impede the production of affordable units, especially in our non-urban areas, where we have some of the greatest need.

House Bill 6428: AN ACT ESTABLISHING A THREE-PERSON PANEL TO HEAR AFFORDABLE HOUSING APPEALS:

As I previously stated, it is DOH's understanding that the state judicial branch will be submitting testimony on this proposal, which we believe would establish a three judge trial referee panel to review all appeals filed under C.G.S. 8-30g and would also empower local commission's with the ability to call certain witnesses in a court proceeding if they believe said witnesses have "credible personal knowledge of the proposed site" to be developed. As you know, these applications include, but are not limited to, studies by experts on traffic, health and safety, and the environment. The definition and determination of "credible personal knowledge of the proposed site" is unclear. I would like to note that community members do have the opportunity to appear locally before their planning and zoning commissions to testify as part of the public record. I would defer to the judicial branch's field specific, legal knowledge to offer further comments on this proposal.

House Bill 6588: AN ACT CONCERNING THE TERM OF THE MORATORIUM FROM THE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE:

We oppose increasing the length of a moratorium under C.G.S. 8-30g from four years to five years. The intent of a moratorium is to allow municipalities to plan for the development of more affordable housing in their communities. Achieving a moratorium, without planning for the future, whether its 4 years or 5 years, does little to promote housing choice by increasing the stock of affordable housing.

House Bill 6591: AN ACT PROHIBITING THE CONVERSION OF AGE-RESTRICTED HOUSING TO AFFORDABLE HOUSING:

The intent of this proposal is unclear and it does not appear to be applicable to C.G.S. 8-30g. As drafted, this proposal would "prohibit the conversion of age-restricted housing to affordable housing." In general, DOH does not support this concept, as we know that the greatest need in the State of Connecticut is for non-age restricted family housing units. We have also seen great success in converting age-restricted housing to non-age restricted housing. This type of conversion promotes diverse, multigenerational communities. Please know that people of all ages can live in non-age restricted housing, which includes the elderly population.

House Bill 6598: AN ACT CONCERNING DEED-RESTRICTIONS FOR AFFORDABLE HOUSING UNITS:

The intent of this legislation is to change the deed-restriction needed to qualify for points under C.G.S. 8-30g from forty years, to "in-perpetuity." DOH opposes this proposal because it is a deterrent to the rehabilitation of older affordable housing units, as they approach the end of their deed-restriction. It also serves as a disincentive to developers to deed restrict because the property they are building will never be allowed to turnover into non-deed restricted housing. This is burdensome to both a developer and a municipality when it comes to planning for the future.

Financially this is burdensome to the developer or property owner. A deed-restriction is intended to be finite with the expectation that a municipality will be constantly growing and expanding. DOH believes this will limit the production of affordable housing.

House Bill 6599: AN ACT EXEMPTING CERTAIN MUNICIPALITIES FROM THE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE:

We oppose this legislation, which exempts municipalities from the requirements of C.G.S. 8-30g if they have established an Incentive Housing Zone (IHZ) pursuant to C.G.S. 8-13n. I mentioned earlier that the state has funded approximately 18,500 units of affordable housing since 2011. Since the creation of the IHZ program in 2007 we have established IHZ's in 11 municipalities and of those 11 municipalities, only 28 units of affordable housing have been produced in 2 municipalities. An exemption from C.G.S. 8-30g, just for establishing an IHZ, would greatly impede our ability to create affordable units in the State of Connecticut.

House Bill 6606: AN ACT CONCERNING AFFORDABLE HOUSING WITHIN WATERSHED AREAS:

Although the Department is supportive of the protection of our watersheds, we do not support this concept, as it appears it would prevent the development of any property, regardless of size, topography, or soil composition that contained even a portion of watershed. There are sufficient safeguards and protections in both state and local regulations to ensure the protection of our watersheds, without the exclusionary activities of this legislation.

House Bill 6875: AN ACT CONCERNING THE CLASSIFICATION OF CERTAIN HOUSING IN THE TOWN OF STRATFORD:

I have spoken to the proponent of this bill and I have asked that local leaders in the Town of Stratford reach out to my Department so that we can discuss their concerns in more detail. We understand that the intent of this proposal is to automatically count Success Village and Stonybrook Co-Op for points under C.G.S. 8-30g. However, unless the units have affordable deed restrictions placed on them, we would oppose this legislation.

House Bills 6169, 6172, 6590, 6592, and 6595:

All of these proposals appear to amend C.G.S. 8-30g so that a developer, after having their proposal rejected by a local planning and zoning board or commission, may not come before that board for a period of at least one year. DOH cautions this committee against passing any legislation that would enact a blanket ban of developers from reintroducing a proposal before local planning and zoning boards.

However, there is an opportunity here to address concerns with regard to the "bad actors" or the "predatory developers." Further discussion is needed to determine the best way to draft this proposal so that developers—whose initial proposals are rejected, on legitimate grounds—are not penalized from being able to come before planning and zoning for one year.

Legislation like this would need to be carefully drafted, since we believe the intent of this proposal is to reduce the cases of developers—whose application does not initially include affordable units—from using C.G.S. 8-30g only after their proposal is rejected.

These proposals present an opportunity to address the “predatory developer” and “bad actor” issues and if drafted appropriately there would be no need to make any further changes to 8-30g. However, we cannot support these proposals as drafted.

Thank you for allowing me to provide testimony before your committee on several pieces of legislation that affect the Department of Housing and the constituents we serve. Should any of the members of this committee have any additional questions, I stand ready to answer those for you at this time.