

Understanding the Amendments to Connecticut's Affordable Housing Act

SEPTEMBER 8, 2000

SAMPLE AFFORDABILITY PLAN FOR THE
"HOLLYWOOD" RESIDENTIAL DEVELOPMENT
"SET ASIDE" DEVELOPMENT UNDER
CONN. GEN. STAT. § 8-30g,
AS AMENDED BY PUBLIC ACT 00-206

Note: This Affordability Plan has been drafted to provide an example of compliance with the requirement of the amended § 8-30g, subsection (b)(1) (see excerpt, next page), which requires affordable housing applicants to submit with their applications an affordability plan. This sample utilizes the hypothetical "Hollywood" development in the Town of "Hypoville" that is referenced elsewhere in these materials. This sample assumes, but does not include, the simultaneous submission of proposed zoning regulations and development plans.

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Text of new subsection requiring affordability plans, § 8-30g(b)(1):

(b)(1) Any person filing an affordable housing application with a commission shall submit, as part of the application, an affordability plan which shall include at least the following: (A) Designation of the person, entity or agency that will be responsible, for the duration of any affordability restrictions, for the administration of the affordability plan and its compliance with the income limits and sale price or rental restrictions of this chapter; (B) an affirmative fair housing marketing plan governing the sale or rental of all dwelling units; (C) a sample calculation of the maximum sales prices or rents of the intended affordable dwelling units; (D) a description of the projected sequence in which, within a set-aside development, the affordable dwelling units will be built and offered for occupancy and the general location of such units within the proposed development; and (E) draft zoning regulations, conditions of approval, deeds, restrictive covenants or lease provisions that will govern the affordable dwelling units.

AFFORDABILITY PLAN

INTRODUCTION

Develo Corporation, Inc. ("Develo") submits this Affordability Plan in conjunction with its application to the Hypoville Planning and Zoning Commission for (a) approval of a new section of the Hypoville Zoning Regulations entitled "Housing Opportunity Development" (HOD) zone; (b) rezoning of 50 acres adjacent to Flaherty Street to this HOD designation; and (c) approval of its "Hollywood" residential development, consisting of subdivision approval for 50 single-family detached homes on subdivided lots, and site plan approval for 50 rental apartments on the remaining acreage.

Under this plan, thirty percent (30%) of the homes of Hollywood will be designated as "Housing Opportunity Units" that will meet the criteria for "affordable housing" as defined in Connecticut General Statutes ("C.G.S.") § 8-30g. As amended by the legislature effective October 1, 2000, C.G.S. § 8-30g requires that for this application at least fifteen percent (15%) of the units must be affordable for 40 years to families earning eighty percent (80%) or less of the median income for the greater Waterbury area or the State median income, whichever is less, and at least fifteen percent (15%) of the units must be affordable to those earning sixty percent (60%) or less of either the area or State median income, whichever is less. Because the area median income for Waterbury (\$58,000) as of the date of this application is less than the statewide median (\$66,000), this plan uses the lower figure; however, please note that actual maximum sale prices and rents are to be calculated at the time of lease or conveyance.

Develo proposes to set aside eight (8) for sale-units and seven (7) rental units for eighty percent (80%) of median households, and seven (7) for sale units and eight (8) rental units for sixty percent (60%) of median households. Affordable units will include three or two bedrooms. This Affordability Plan, which is proposed as a condition of approval of the subdivision and site plan approval by the Hypoville Planning and Zoning Commission, reflects and expands upon the requirements for affordable units set forth in the proposed HOD regulations, and describes how the HOD regulations regarding affordability will be administered.

AFFORDABILITY PLAN FOR HOLLYWOOD RESIDENTIAL COMMUNITY

I. Units Designated For Housing Opportunity Development.

Thirty percent (30%) of the units of the Hollywood development will be designated as affordable housing, as defined by C.G.S. § 8-30g. The specific units to be designated as affordable housing (to be called "Housing Opportunity Units") are set forth in Schedule A attached hereto.

II. Forty (40) Year Period.

The Housing Opportunity Units shall be designated as affordable housing units for forty (40) years. The forty (40) year affordability period shall be calculated separately for each Housing Opportunity Unit, and the period shall begin on the date of initial leasing or conveyance of such Housing Opportunity Unit from Develo or its successors or assigns.

III. Pro-Rata Construction And Dispersion.

The Housing Opportunity Units shall be built and offered for sale or lease on a *pro rata* basis as construction proceeds. The proposed dispersion of Housing Opportunity Units is identified on subdivision and site development plans and in Schedule A. It is the intent of this Plan that three (3) Housing Opportunity Units will be built and offered for sale or built and offered for lease within the time that ten (10) market-rate units are built and offered for sale or built and offered for lease. The Town of Hypoville, acting through its Zoning Enforcement Officer or building official as appropriate, may withhold issuance of a certificate of occupancy for a market-rate unit within this Housing Opportunity Development until such time as a sufficient number of certificates of occupancy for Housing Opportunity Units have been issued to maintain the ratio required by this Plan.

IV. Nature Of Construction Of Housing Opportunity Units And Market-Rate Units.

Within Hollywood, Housing Opportunity Units for sale shall be constructed in substantial conformance with the specifications set forth in Schedule B of this Plan. Affordable rental units shall be comparable in size to market rate units containing the same number of bedrooms, and shall contain the same amenities as provided as standard features to all other rental units of the same size.

V. Entity Responsible For Administration And Compliance.

This Affordability Plan will be administered by Develo or its successors and assigns ("Administrator"). Develo shall commence the role of Administrator as owner. The Administrator shall submit a written status report to the Hypoville Planning and Zoning Commission on compliance with this Affordability Plan annually on or before January 31. The role of Administrator may be transferred or assigned to another entity, provided that such entity

has the experience and qualifications to administer this Plan. In the event of any assignment of the role of Administrator, Develo or its successors will provide prior written notice to the Hypoville Planning and Zoning Commission.

VI. Affirmative Fair Housing Marketing Plan.

In the Hollywood development, the sale or lease of both Housing Opportunity Units and market rate units shall be publicized, using State regulations for affirmative fair housing marketing programs as guidelines. The purpose of such efforts shall be to apprise residents of municipalities of relatively high concentrations of minority populations of the availability of such units. The Administrator shall have responsibility for compliance with this section.. Notices of initial availability of units shall be provided, at a minimum, by advertising at least two times in a newspaper of general circulation in the Town. The Administrator shall also provide such notices to the Hypoville Planning and Zoning Commission, the Town of Hypoville, the Hypoville Housing Authority, and the Hypoville Board of Education. Such notices shall include a description of the available Housing Opportunity Unit(s), the eligibility criteria for potential lessees or purchasers, the Maximum Sale Price or Rental Price (as hereinafter defined), and the availability of application forms and additional information.

Using the above-referenced State regulations as guidelines, dissemination of information about available affordable and market rate units shall include:

- analyzing census and other data to identify racial and ethnic groups least represented in Hypoville population;
- announcements/advertisements in publications and other media that will reach minority populations;
- announcements to social service agencies and other community contacts serving low-income minority families (including churches, civil rights organizations, housing authorities, legal services organizations, etc.);
- assistance to minority applicants in processing applications;
- marketing efforts in geographic area of high minority concentrations within the housing market area; and
- beginning affirmative marketing efforts prior to general marketing of units, and repeating again during initial marketing and at 50 percent completion.

All notices shall comply with the federal Fair Housing Act, 42 U.S.C. §§ 3601 et seq. and the Connecticut Fair Housing Act, C.G.S. §§ 46a-64b, 64c (together, the "Fair Housing Acts").

VII. Purchase And Lease Eligibility.

Eligibility of families or households to purchase a Housing Opportunity Unit in the Hollywood development shall be determined by the Administrator in accordance with § 8-30g as amended.

VIII. Application Process.

A family or household seeking to purchase one of the Housing Opportunity Units ("Applicant") must complete an application to determine eligibility. The application form and process shall comply with the Fair Housing Acts.

A. Application Form.

The application form shall be provided by the Administrator and shall include an income certification form. In general, income for purposes of determining an Applicant's qualification shall include the Applicant family's total anticipated income from all sources for the twelve (12) month period following the date the application is submitted ("Application Date"). If the Applicant's financial disclosures indicate that the Applicant may experience a significant change in the Applicant's future income during the twelve (12) month period, the Administrator shall not consider this change unless there is a reasonable assurance that the change will in fact occur. The Applicant's income need not be re-verified after the time of initial purchase. In determining what is and is not to be included in the definition of family annual income, the Administrator shall use the criteria set forth by HUD and listed on Schedule C, attached.¹

B. Applicant Interview.

The Administrator shall interview an Applicant upon submission of the completed application. Specifically, the Administrator shall, during the interview, undertake the following:

1. Review with the Applicant all the information provided on the application.
2. Explain to the Applicant the requirements for eligibility, verification procedures, and the penalties for supplying false information.
3. Verify that all sources of family income and family assets have been listed in the application. Make clear that the term "family" includes all individuals who are to occupy the home, and that no relationship by blood or marriage is required.
4. Request the Applicant to sign the necessary release forms to be used in verifying income. Inform the Applicant of what verification and documentation must be provided before the application is deemed complete.

¹ See 24 C.F.R. § 5.609. Federal regulations are subject to change, and it is the intent of this Affordability Plan, including Schedules C and D, to use as guidelines HUD regulations with respect to income certification, as such regulations may be amended from time to time.

5. Inform the Applicant that a decision as to eligibility cannot be made until all items on the application have been verified.
6. Review with the Applicant the process and restrictions regarding resale.

C. *Verification of Applicant's Income.*

Where it is evident from the income certification form provided by the Applicant that the Applicant is not eligible, additional verification procedures shall not be necessary. However, if the Applicant appears to be eligible, the Administrator shall require verification of the Applicant's reported income.

If applicable, the Applicant shall provide the documentation listed on Schedule D, attached hereto, to the Administrator. This list is not exclusive, and the Administrator may require any other verification or documentation as the Administrator deems necessary.

IX. Maximum Initial Sale Price And Maximum Resale Price; Maximum Rental

Calculation of the maximum initial sale price or maximum resale price ("Maximum Sale Price") or Maximum Rental for a Housing Opportunity Unit, so as to satisfy C.G.S. § 8-30g, shall utilize the lesser of the area median income data for the Town of Hypoville or the statewide median as published by HUD as in effect on the day a purchase and sale agreement is accepted by the owner of the Housing Opportunity Unit ("Owner"), or the day a lease has been executed by both lessor and lessee so as to create a tenancy.

The Maximum Sale or Resale Price shall be calculated as follows:

Calculation steps for three bedroom sale unit at 80 percent of area or statewide median

1. Determine 2000 (or relevant year) area median income for Hartford PMSA or statewide median, adjusted for family size (calculated at 1.5 persons per bedroom), as published by HUD
2. Calculate 80 percent of Step 1
3. Calculate 30 percent of Step 2, representing the maximum portion of a family's income that may be used for housing
4. Divide Step 3 by twelve (12) to determine the maximum monthly outlay
5. Determine by reasonable estimate monthly expenses, including taxes, insurance, heat and utility costs, excluding telephone and cable television, but including any required common interest ownership or similar fee
6. Subtract Step 5 from Step 4 to determine the amount available for mortgage principal and interest
7. Apply amount available from Step 6 to standard mortgage term at then-prevailing interest rate to determine the financeable amount
8. Determine downpayment (see Section X)
9. Add Steps 7 and 8 to determine the MAXIMUM SALE OR RESALE PRICE

Calculation steps for three-bedroom sale unit at 60 percent of area or statewide median

1. Determine 2000 (or relevant year) area median income for Hartford PMSA or statewide median, adjusted for family size (calculated at 1.5 persons per bedroom), as published by HUD
2. Calculate 60 percent of Step 1
3. Calculate 30 percent of Step 2, representing the maximum portion of a family's income that may be used for housing
4. Divide Step 3 by twelve (12) to determine the maximum monthly outlay
5. Determine by reasonable estimate monthly expenses, including taxes, insurance, heat and utility costs, excluding telephone and cable television, but including any required common interest ownership or similar fee

6. Subtract Step 5 from Step 4 to determine the amount available for mortgage principal and interest
7. Apply amount available from Step 6 to standard mortgage term at then-prevailing interest rate to determine the financeable amount
8. Determine downpayment (see Section X)
9. Add Steps 7 and 8 to determine the MAXIMUM SALE OR RESALE PRICE

Calculation steps for two bedroom rental unit at 80 percent of area or statewide median

1. Determine 2000 (or relevant year) area median income for Hartford PMSA or statewide median, adjusted for family size (calculated at 1.5 persons per bedroom), as published by HUD
2. Calculate 80 percent of Step 1
3. Calculate 30 percent of Step 2, representing the maximum portion of a family's income that may be used for housing
4. Divide Step 3 by twelve (12) to determine the maximum monthly housing payment
5. By reference to published HUD tables, determine the HUD Fair Market Rent for unit with comparable number of bedrooms. Multiply this amount by one hundred twenty percent (120%)
6. Maximum monthly payment for this rental unit is the lesser of amount calculated in Step 4 or 5 above
7. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television, but including any fee required of all tenants
8. Maximum monthly outlay for rent plus estimated monthly expenses may not exceed the amount determined in Step 6

Calculation steps for two bedroom rental unit at 60 percent of area or statewide median

1. Determine 2000 (or relevant year) area median income for Hartford PMSA or statewide median, adjusted for family size (calculated at 1.5 persons per bedroom), as published by HUD

2. Calculate 60 percent of Step 1
3. Calculate 30 percent of Step 2 representing the maximum portion of a family's income that may be used for housing
4. Divide Step 3 by twelve (12) to determine the maximum monthly outlay
5. By reference to published HUD tables, determine the HUD Fair Market Rent for comparable size unit
6. Maximum monthly payment for this rental unit is the lesser of amount calculated in Step 4 or 5 above
7. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television, but including any fee required of all tenants
8. Maximum monthly outlay for rent plus estimated monthly expenses may not exceed the amount determined in Step 6

X. Downpayments.

The downpayment for a Housing Opportunity Unit that is sold/purchased shall not exceed ten percent (10%) of the purchase price. However, this Plan does not require, and shall be interpreted to require, a ten percent (10%) downpayment for each unit that is sold or purchased, and thus the downpayment may be reduced. There shall be no minimum downpayment.

XI. Required Fees And Access To Amenities.

All owners and lessees of Housing Opportunity Units shall have the same rights and privileges as owners and lessees of market-rate units within the development, including access to and use of recreational and community amenities. Fees charged to owners or lessees of Housing Opportunity Units shall not be set so as to cause such owners or lessees to pay more than the maximum monthly payment as determined in the preceding sample calculations.

XII. Principal Residence.

Housing Opportunity Units shall be occupied only as an owner's or lessee's principal residence.

XIII. Requirement To Maintain Condition.

All owners and tenants are required to maintain their units. The owner or lessee shall not destroy, damage or impair the unit, allow the unit to deteriorate, or commit waste on the unit. When a Housing Opportunity Unit is offered for resale or release, the Administrator shall cause the home to be inspected.

XIV. Resale Of A Housing Opportunity Unit.

An Owner may sell a Housing Opportunity Unit at any time, provided the Owner complies with the restrictions concerning the sale of homes as set forth in this Affordability Plan and in the deed restrictions attached hereto as Schedule E (the "Deed Restrictions"). If the Owner wishes to sell, the Owner shall notify the Administrator in writing. The Administrator shall then work with the Owner to calculate a Maximum Sale Price, as set forth in Section X above. The Administrator shall publish notice in the same manner as was followed for the initial sale, as set forth in Section VI above. The Administrator shall bring any purchase offers received to the attention of the Owner.

The Owner may hire a real estate broker or otherwise individually solicit offers, independent of the Administrator's action, from potential purchasers. The Owner shall inform any potential purchaser of the affordability restrictions before any purchase and sale agreement is executed by furnishing the potential purchaser with a copy of this Affordability Plan. The purchase and sale agreement shall contain a provision to the effect that the sale is contingent upon a determination by the Administrator that the potential purchaser meets the eligibility criteria set forth in this Plan. Once the purchase and sale agreement is executed by the Owner and potential purchaser, the potential purchaser shall immediately notify the Administrator in writing. The Administrator shall have thirty (30) days from such notice to determine the eligibility of the potential purchaser in accordance with the application process set forth in Section VIII above. The Administrator shall notify the Owner and the potential purchaser of its determination of eligibility in writing within said thirty (30) day period. If the Administrator determines that the potential purchaser is not eligible, the purchase and sale agreement shall be void, and the Owner may solicit other potential purchasers. If the Administrator determines that the potential purchaser is eligible, the Administrator shall provide the potential purchaser and the Owner with a signed certification to the effect that the sale of the particular Housing Opportunity Unit has complied with the provisions of this Affordability Plan.

XV. Change Of Income Or Qualifying Status Of Tenant Of Rental Unit.

If an affordable unit is rented, in the event that an affordable unit tenant's income changes so as to exceed the qualifying maximum, or if the tenant otherwise becomes disqualified, such tenant must provide notice to the Administrator within seven (7) days of the disqualification. Upon being disqualified, such tenant, following the procedures set forth below, shall have the option to vacate the unit within ninety (90) days, or to remain in the unit paying a market-rate rent. Within fifteen (15) days of receiving notice of a tenant's disqualification, the Administrator shall provide written notice to the tenant of the market-rate rent for the unit. The tenant shall notify the Administrator within fifteen (15) days of receipt of such notice whether

the tenant will accept the market-rate rent or vacate. If the tenant elects to remain in the unit at the market rate, the Administrator shall offer the next available unit as an affordable unit, if necessary, in order for the development to comply with the minimum set aside for affordable units. So long as these procedures are followed, the project shall not be out of compliance with the minimum.

XVI. Enforcement.

A violation of this Affordability Plan shall not result in a forfeiture of title, but the Hypoville Planning and Hypoville Zoning Commission shall otherwise retain all enforcement powers granted by the General Statutes, including § 8-12, which powers include, but are not limited to, the authority, at any reasonable time, to inspect the property and to examine the books and records of the Administrator to determine compliance of Housing Opportunity Units with the affordable housing regulations.

XVII. Deed Restrictions.

The Deed Restrictions shall be included in each deed of a Housing Opportunity Unit during the forty (40) year period in which the affordability program is in place to provide notice of the affordability restrictions and to bind future purchasers. The Deed Restrictions include a right of first offer that shall apply to the first conveyance of the Housing Opportunity Unit following the expiration of the forty (40) year affordability period.

XVIII. Binding Effect.

This Affordability Plan shall be binding on the successors and assigns of Develo.

SCHEDULE A

PHASING AND DESIGNATION OF HOUSING OPPORTUNITY UNITS

1. For Sale Units. As shown on the Site and Subdivision Plan for the Hollywood residential development, as on file, affordable units will be located on lots 1, 3-5, 9, 16, 22, 31-33, 39, 42, 47, 49, and 50.

[Author's Note: Conn. Gen. Stat. § 8-30g as amended by Public Act 00-206 requires the affordability plan to address the sequence and general location of affordable units.]

2. Rental Units. The designation of rental units that will be affordable may change over time, as explained in Section XV of this Plan. However, as explained in Section XV of this Plan, the Administrator shall adhere to restricting at least 15 rental units and 30 units overall as affordable, shall maintain affordable units in each bedroom size, and shall adhere to the "next available unit" rule.

SCHEDULE B

SPECIFICATIONS FOR THREE BEDROOM SINGLE-FAMILY DETACHED HOUSING OPPORTUNITY UNITS TO BE SOLD AT 80 PERCENT OF MEDIAN

Minimum Square Footage (1,400 square feet)

3 Bedrooms (Master Bedroom with private bath)
2 1/2 Baths
Living Room
Dining Room
Den
Eat-in Kitchen
One Car Garage
Deck or Patio
Laundry Closet
Utility Closet
Linen Closet
Basement Option

EXTERIOR

- Grass front, back and side yards
- Foundation plantings
- No-maintenance vinyl siding
- Aluminum gutters and down spouts
- Two exterior weather-proof electrical outlets
- Therma-Tru weather stripped and insulated entry door
- Insulated sliding glass patio doors with screens (where applicable)
- Energy efficient vinyl windows
- Asphalt driveways and walks
- Front and rear hose bibs

INTERIOR

- Wall to wall carpeting in choice of color
- R-38 attic insulation
- R-19 exterior wall construction
- Whole house wrap plus caulk to prevent air infiltration
- Energy efficient heating system
- Quick recovery hot water heater
- Direct wire smoke detectors
- Easy care vinyl clad wire closet shelving
- Pre-wired telephone and cable TV outlets

- Laundry area with washer / dryer hook-ups
- Copper wiring throughout home
- Garage with direct interior access
- Ground fault circuits in kitchen, bathrooms and garage

KITCHENS

- Choice of cushioned no-wax vinyl flooring
- Choice of designer laminate or traditional wood cabinets
- Electric oven
- Direct vent, two speed range hood
- Multi-cycle dishwasher
- Choice of colored laminate countertops
- Stainless steel sink with single lever faucet

BATHROOMS

- Full width vanity mirrors
- Single piece acrylic tubs and shower surrounds
- Laminate vanity tops
- Choice of no-wax vinyl flooring

[Author's Note: similar specifications should be included for for-sale units to be sold at 60 percent of median, and for affordable rental units.]

SCHEDULE C
DEFINITIONS AND ELEMENTS OF ANNUAL FAMILY INCOME

1. Annual income includes, but is not limited to, the following:

(a) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses and other compensation for personal services;

(b) The net income from operations of a business or profession, before any capital expenditures but including any allowance for depreciation expense;

(c) Interest, dividends, and other net income of any kind from real or personal property;

(d) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, or other similar types of periodic payments;

(e) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay;

(f) Welfare assistance. If the welfare assistance payments include an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance to be included as income consists of the following:

(i) The amount of the allowance exclusive of the amounts designated for shelter or utilities, plus

(ii) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities;

(g) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing with the Applicant (e.g. periodic gifts from family members, churches, or other sponsored group, even if the gifts are designated as rental or other assistance);

(h) All regular pay, special pay and allowances of a member of the armed forces; and

(i) Any earned income tax credit to the extent it exceeds the income tax liability of the Applicant.

2. Excluded from the definition of family annual income are the following:

- (a) Income from employment of children under the age of 18;
- (b) Payments received for the care of foster children;
- (c) Lump-sum additions to family assets, such as inheritances, insurance payments, capital gains and settlement for personal or property losses;
- (d) Amounts received that are specifically for, or in reimbursement of, the cost of medical expense for any family member;
- (e) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran in connection with education costs;
- (f) Amounts received under training programs funded by HLTD;
- (g) Food stamps; and
- (h) Temporary, nonrecurring or sporadic income (including gifts that are not regular or periodic).

3. Net family assets for purposes of imputing annual income include the following:

- (a) Cash held in savings and checking accounts, safety deposit boxes, etc.;
- (b) The current market value of a trust for which any household member has an interest;
- (c) The current market value, less any outstanding loan balances of any rental property or other capital investment;
- (d) The current market value of all stocks, bonds, treasury bills, certificates of deposit and money market funds;
- (e) The current value of any individual retirement or Keogh account;
- (f) The cash value of a retirement or pension fund which the family member can withdraw without terminating employment or retiring;
- (g) Any lump-sum receipts not otherwise included in income (i.e., inheritances, capital gains, one-time lottery winnings, and settlement on insurance claims);
- (h) The current market value of any personal property held for investment (i.e., gems, jewelry, coin collections); and

(i) Assets disposed of within two (2) years before the Application Date, but only to the extent consideration received was less than the fair market value of the asset at the time it was sold.

4. Net family assets do not include the following:

- (a) Necessary personal property (clothing, furniture, cars, etc.);
- (b) Vehicles equipped for handicapped individuals;
- (c) Life insurance policies;
- (d) Assets which are part of an active business, not including rental properties;

and

(e) Assets that are not accessible to the Applicant and provide no income to the Applicant.

SCHEDULE D DOCUMENTATION OF INCOME

The following documents shall be provided, where applicable, to the Administrator to determine income eligibility:

1. Employment Income.

Verification forms must request the employer to specify the frequency of pay, the effective date of the last pay increase, and the probability and effective date of any increase during the next twelve (12) months. Acceptable forms of verification (of which at least one must be included in the Applicant file) include:

- (a) An employment verification form completed by the employer.
- (b) Check stubs or earnings statement showing Applicant's gross pay per pay period and frequency of pay.
- (c) W-2 forms if the Applicant has had the same job for at least two years and pay increases can be accurately projected.
- (d) Notarized statements, affidavits or income tax returns signed by the Applicant describing self-employment and amount of income, or income from tips and other gratuities.

2. Social Security, Pensions, Supplementary Security Income, Disability Income.

- (a) Benefit verification form completed by agency providing the benefits.
- (b) Award or benefit notification letters prepared and signed by the authorizing agency. (Since checks or bank deposit slips show only net amounts remaining after deducting SSI or Medicare, they may be used only when award letter cannot be obtained.)
- (c) If a local Social Security Administration (SSA) office refuses to provide written verification, the Administrator should meet with the SSA office supervisor. If the supervisor refuses to complete the verification forms in a timely manner, the Administrator may accept a check or automatic deposit slip as interim verification of Social Security or SSI benefits as long as any Medicare or state health insurance withholdings are included in the annual income.

3. Unemployment Compensation.

- (a) Verification form completed by the unemployment compensation agency.

(b) Records from unemployment office stating payment dates and amounts.

4. Government Assistance.

(a) All Government Assistance Programs. Agency's written statements as to type and amount of assistance Applicant is now receiving, and any changes in assistance expected during the next twelve (12) months.

(b) Additional Information for "As-paid" Programs: Agency's written schedule or statement that describes how the "as-paid" system works, the maximum amount the Applicant may receive for shelter and utilities and, if applicable, any factors used to ratably reduce the Applicant's grant.

5. Alimony or Child Support Payments.

(a) Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules.

(b) A letter from the person paying the support.

(c) Copy of latest check. The date, amount, and number of the check must be documented.

(d) Applicant's notarized statement or affidavit of amount received or that support payments are not being received and the likelihood of support payments being received in the future.

6. Earned Income Tax Credit.

(a) For credits applied in one lump sum against tax liability, use income tax return (IRS Form 1040 or 1040A).

(b) For credits applied through regular salary paychecks, use IRS Form W-5 (Earned Income Credit Advance Payment Certificate).

7. Net Income from a Business.

The following documents show income for the prior years. The Administrator must consult with Applicant and use this data to estimate income for the next twelve (12) months.

- (a) IRS Tax Return, Form 1040, including any:
Schedule C (Small Business)
Schedule E (Rental Property Income)
Schedule F (Farm Income)
- (b) An accountant's calculation of depreciation expense, computed using straight-line depreciation rules. (Required when accelerated depreciation was used on the tax return or financial statement.)
- (c) Audited or unaudited financial statement(s) of the business.
- (d) A copy of a recent loan application listing income derived from the business during the previous twelve (12) months.
- (e) Applicant's notarized statement or affidavit as to net income realized from the business during previous years.

8. Recurring Gifts.

- (a) Notarized statement or affidavit signed by the person providing the assistance. Must give the purpose, dates and value of gifts.
- (b) Applicant's notarized statement or affidavit that provides the information above.

9. Scholarships, Grants, and Veterans Administration Benefits for Education.

- (a) Benefactor's written confirmation of amount of assistance, and educational institution's written confirmation of expected cost of the student's tuition, fees, books and equipment for the next twelve (12) months. To the extent the amount of assistance received is less than or equal to actual educational costs, the assistance payments will be excluded from the Applicant's gross income. Any excess will be included in income.
- (b) Copies of latest benefit checks, if benefits are paid directly to student. Copies of canceled check or receipts for tuition, fees, books, and equipment, if such income and expenses are not expected to change for the next twelve (12) months.
- (c) Lease and receipts or bills for rent and utility costs paid by students living away from home.

10. Family Assets Currently Held.

For non-liquid assets, collect enough information to determine the current cash value (i.e., the net amount the Applicant would receive if the asset were converted to cash).

- (a) Verification forms, letters, or documents from a financial institution, broker, etc.
- (b) Passbooks, checking account statements, certificates of deposit, bonds, or financial statements completed by a financial institution or broker.
- (c) Quotes from a stock broker or realty agent as to net amount Applicant would receive if Applicant liquidated securities or real estate.
- (d) Real estate tax statements if tax authority uses approximate market value.
- (e) Copies of closing documents showing the selling price, the distribution of the sales proceeds and the net amount to the borrower.
- (f) Appraisals of personal property held as a investment.
- (g) Applicant's notarized statements or signed affidavits describing assets or verifying the amount of cash held at the Applicant's home or in safe deposit boxes.

11. Assets Disposed of for Less Than Fair Market Value ("FMV") During Two Years Preceding Application Date.

- (a) Applicant's certification as to whether it has disposed of assets for less than FMV during the two (2) years preceding the Application Date.
- (b) If the Applicant states that it did dispose of assets for less than FMV, then a written statement by the Applicant must include the following:
 - (i) A list of all assets disposed of for less than FMV;
 - (ii) The date Applicant disposed of the assets;
 - (iii) The amount the Applicant received; and
 - (iv) The market value to the asset(s) at the time of disposition.

12. Savings Account Interest Income and Dividends.

(a) Account statements, passbooks, certificates of deposit, etc., if they show enough information and are signed by the financial institution.

(b) Broker's quarterly statements showing value of stocks or bonds and the earnings credited the Applicant.

(c) If an IRS Form 1099 is accepted from the financial institution for prior year earnings, the Administrator must adjust the information to project earnings expected for the next twelve (12) months.

13. Rental Income from Property Owned by Applicant.

The following, adjusted for changes expected during the next twelve (12) months, may be used:

(a) IRS Form 1040 with Schedule E (Rental Income).

(b) Copies of latest rent checks, leases, or utility bills.

(c) Documentation of Applicant's income and expenses in renting the property (tax statements, insurance premiums, receipts for reasonable maintenance and utilities, bank statements or amortization schedule showing monthly interest expense).

(d) Lessee's written statement identifying monthly payments due the Applicant and Applicant's affidavit as to net income realized.

14. Full-Time Student Status.

(a) Written verification from the registrar's office or appropriate school official.

(b) School records indicating enrollment for sufficient number of credits to be considered a full-time student by the school.

SCHEDULE E DEED RESTRICTIONS

(The language below shall be inserted in each deed for a Housing Opportunity Unit.)

The property conveyed hereby is an "affordable housing unit" as defined in C.G.S. § 8-30g. Said property is subject to the following restrictions (the "Restrictions"):

A. The owner of said property shall sell or transfer said property only to certain eligible families or households as specified in C.G.S. § 8-30g as amended by Public Act 99-261. Applicable income limits shall be determined by the Connecticut Department of Housing and the U.S. Department of Housing and Urban Development ("HUD"). Determination of a potential purchaser's eligibility shall be made by the Administrator (as defined in that certain Affordability Plan (the "Affordability Plan") for the site plan of which said property is a part, a copy of which plan is on file in Hypoville's Planning and Zoning Office).

B. Said owner shall convey said property at a price that will preserve said property as affordable housing. Calculation of the maximum initial sale price or maximum resale price ("Maximum Sale Price") for said property, so as to satisfy C.G.S. § 8-30g, shall utilize the lesser of the area median income data for the Town of Hypoville or the statewide median, as published by HUD as in effect on the day a purchase and sale agreement is accepted by said owner. The Maximum Sale or Resale Price shall be calculated as follows:

Calculation steps for three bedroom sale unit at 80 percent of area or statewide median

1. Determine 2000 (or relevant year) area median income for Hartford PMSA or statewide median, adjusted for family size (calculated at 1.5 persons per bedroom), as published by HUD
2. Calculate 80 percent of Step 1
3. Calculate 30 percent of Step 2, representing the maximum portion of a family's income that may be used for housing
4. Divide Step 3 by twelve (12) to determine the maximum monthly outlay
5. Determine by reasonable estimate monthly expenses, including taxes, insurance, heat and utility costs, excluding telephone and cable television, but including any required common interest ownership or similar fee
6. Subtract Step 5 from Step 4 to determine the amount available for mortgage principal and interest
7. Apply amount available from Step 6 to standard mortgage term at then-prevailing interest rate to determine the financeable amount

8. Determine downpayment (see Section X)
9. Add Steps 7 and 8 to determine the MAXIMUM SALE OR RESALE PRICE

Calculation steps for three-bedroom sale unit at 60 percent of area or statewide median

1. Determine 2000 (or relevant year) area median income for Hartford PMSA or statewide median, adjusted for family size (calculated at 1.5 persons per bedroom), as published by HUD
2. Calculate 60 percent of Step 1
3. Calculate 30 percent of Step 2, representing the maximum portion of a family's income that may be used for housing
4. Divide Step 3 by twelve (12) to determine the maximum monthly outlay
5. Determine by reasonable estimate monthly expenses, including taxes, insurance, heat and utility costs, excluding telephone and cable television, but including any required common interest ownership or similar fee
6. Subtract Step 5 from Step 4 to determine the amount available for mortgage principal and interest
7. Apply amount available from Step 6 to standard mortgage term at then-prevailing interest rate to determine the financeable amount
8. Determine downpayment (see Section X)
9. Add Steps 7 and 8 to determine the MAXIMUM SALE OR RESALE PRICE

Calculation steps for two bedroom rental unit at 80 percent of area or statewide median

1. Determine 2000 (or relevant year) area median income for Hartford PMSA or statewide median, adjusted for family size (calculated at 1.5 persons per bedroom), as published by HUD
2. Calculate 80 percent of Step 1
3. Calculate 30 percent of Step 2, representing the maximum portion of a family's income that may be used for housing
4. Divide Step 3 by twelve (12) to determine the maximum monthly housing payment

5. By reference to published HUD tables, determine the HUD Fair Market Rent for unit with comparable number of bedrooms. Multiply this amount by one hundred twenty percent (120%)
6. Maximum monthly payment for this rental unit is the lesser of amount calculated in Step 4 or 5 above
7. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television, but including any fee required of all tenants
8. Maximum monthly outlay for rent plus estimated monthly expenses may not exceed the amount determined in Step 6

Calculation steps for two bedroom rental unit at 60 percent of area or statewide median

1. Determine 2000 (or relevant year) area median income for Hartford PMSA or statewide median, adjusted for family size (calculated at 1.5 persons per bedroom), as published by HUD
2. Calculate 60 percent of Step 1
3. Calculate 30 percent of Step 2 representing the maximum portion of a family's income that may be used for housing
4. Divide Step 3 by twelve (12) to determine the maximum monthly outlay
5. By reference to published HUD tables, determine the HUD Fair Market Rent for comparable size unit
6. Maximum monthly payment for this rental unit is the lesser of amount calculated in Step 4 or 5 above
7. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television, but including any fee required of all tenants
8. Maximum monthly outlay for rent plus estimated monthly expenses may not exceed the amount determined in Step 6

C. In the event said owner desires to make said property available for sale, said owner shall follow the procedures of Section XIV of the Affordability Plan.

D. Said owner shall occupy said property as said owner's principal residence and shall not lease said property.

E. Said owner shall maintain said property. Said owner shall not destroy, damage or impair said property, allow said property to deteriorate, or commit waste on said property. When said property is offered for resale, the Administrator shall cause said property to be inspected.

F. The Restrictions shall run with the land for a period of forty (40) years from the date of initial conveyance of said property by Develo or its success(s) or assign(s) to an eligible family or household. After the expiration of said forty (40) year period, the Restrictions shall be of no further force and effect. Notwithstanding the foregoing, the right of first offer in Paragraph F above shall remain in effect and shall apply to the first conveyance of said property following the expiration of said forty (40) year period.

G. This development was approved by agencies of the Town based in part on the condition that a defined percentage of the homes in the subdivision would be preserved as affordable housing units. The Restrictions are required by law to be strictly enforced.

H. A violation of the Restrictions shall not result in a forfeiture of title, but the Hypoville Planning and Zoning Commission shall otherwise retain all enforcement powers granted by the General Statutes, including § 8-12, which powers include, but are not limited to, the authority, at any reasonable time, to inspect said property and to examine the books and records of the Administrator to determine compliance of said property with the affordable housing regulations.

WELCOME TO HYPOVILLE!

The speakers at today's conference have prepared their remarks with reference to the following hypothetical situation. Any resemblance to a real-life application or town is purely coincidental!

Develo Corporation owns 50 acres in Hypoville, a suburb of Waterbury (the center of the universe). The property fronts on Flaherty Street and is currently zoned for single-family homes on one acre lots. Develo has applied for permits to construct, under Conn. Gen. Stat. § 8-30g, a 100 unit development that will include 50 for sale, single-family detached homes on half acre subdivided lots, and a 50 unit low-rise rental apartment building on the remaining acreage. Thirty percent of the units (16 sale, 14 rental) will be "set aside" as affordable units at the 80 percent or 60 percent of median income levels. Develo seeks a new "Housing Opportunity Development Zone," a rezoning of its land, subdivision approval for the lots, and site plan approval for the apartments and the overall plan.

The property is relatively flat and rectangular, and has one acre of wetlands in the southeast corner. Develo proposes a stormwater detention basin that will require a wetlands permit. The property is served by public water, adequate for domestic and emergency needs. A public sewer line is located within Flaherty Street. There is capacity for 100 units, but connecting these will take half of the line's remaining capacity. The closest traffic intersection to the property's frontage operates at Level C, which will be changed to Level D if the development is built.

2000 Census data indicates that five percent of Hypoville's residents are Black or Hispanic, and current school data show that eight percent of the students in Hypoville's schools are from minority groups.

Calculation of Maximum Sale Price, Resale Price, and Maximum
Rent For Affordable Housing Units in a "Set Aside" Development
Under Public Act 00-206

Timothy S. Hollister
Shipman & Goodwin LLP

September 8, 2000

Public Act 00-206 makes several substantive changes in the calculation of maximum sale prices, resale prices, and rents for affordable housing units developed under Conn. Gen. Stat. § 8-30g. The purpose of this memo is to provide a step-by-step method, with commentary, for the calculation of sale and rental units at 80 percent of median or 60 percent of median.

I. NEW STATUTORY DEFINITIONS.

The starting point for understanding the amended statute is the revised definitions contained in subsections (a)(6) and (7), as follows:

(6) "Set-aside development" means a development in which not less than thirty percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to eighty percent of the median income. In a set-aside development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than fifteen percent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty percent of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty percent of the median income;

(7) "Median income" means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located, as determined by the United States Department of Housing and Urban Development.

The new "set aside" rules for rental units are contained in a new subsection (d) of Conn. Gen. Stat. § 8-30g:

(d) For any affordable dwelling unit that is rented as part of a set-aside development, if the maximum monthly housing cost, as calculated in accordance with subdivision (6) of subsection (a) of this section, would exceed 100 per cent of the Section 8 fair market

rent as determined by the United States Department of Housing and Urban Development, in the case of units set aside for persons and families whose income is less than or equal to sixty per cent of median income, then such maximum monthly housing cost shall not exceed one hundred per cent of said Section 8 fair market rent. If the maximum monthly housing cost, as calculated in accordance with subdivision (6) of subsection (a) of this section, would exceed one hundred twenty per cent of the Section 8 fair market rent, as determined by the United States Department of Housing and Urban Development, in the case of units set aside for persons and families whose income is less than or equal to eighty per cent of median income, then such maximum monthly housing cost shall not exceed one hundred twenty per cent of such Section 8 fair market rent.

This memo uses the hypothetical example set forth on the first page of these materials, for the "Hollywood" development in "Hypoville." Hypoville is posited as being in the Litchfield County portion of the Waterbury Metropolitan Statistical Area ("MSA") as defined by the U. S. Department of Housing and Urban Development.

II. SAMPLE CALCULATION FOR THREE BEDROOM SALE UNIT IN THE HOLLYWOOD DEVELOPMENT AT MAXIMUM OF 80 PERCENT OF AREA OR STATEWIDE MEDIAN INCOME.

Step 1. Determine 2000 (or relevant year) area median income for the Waterbury MSA or the statewide median, adjusted for family size (calculated at 1.5 people per bedroom), as published by HUD.

Commentary: Your first stop in performing this calculation is the website of the U. S. Department of Housing and Urban Development, which can be found at www.huduser.org. If you click on "Data Sets," you will see a listing for "median family incomes." This will tell you that for the year 2000, the statewide median family income for Connecticut is \$66,000. A reprint of this page of the website is attached to this memo.

Your next step is to determine the area median income for the Waterbury MSA. This information can be found on the HUD website under Data Sets by clicking on "2000 income limits and Section 8 fair market rents." Again, a reprint of this portion of the website is attached to this memo. This page informs us that the area median income for the Waterbury area is \$58,000. Because this is less than \$66,000, we use this figure.

In identifying median income figures, it is important to differentiate between so-called "HUD income limits," which are prepared by HUD for HUD-sponsored housing programs, and the area and statewide median incomes that are used in § 8-30g. For example, the website of Connecticut's Department of Economic and Community Development, and the Data Sets portion of HUD's website, publish "HUD income limits." These figures, however, are adjusted by HUD for a variety of reasons, and they are slightly different from the result we get by multiplying the actual, 100 percent statewide or area median income figures by 80 percent or 60 percent. Section 8-30g refers to the HUD state and area median incomes, not the "HUD income limits" that HUD prepares for its own housing programs.

Step 2. The next step is to make a family size adjustment. The Blue Ribbon Commission recommended a calculation of 1.5 persons per bedroom, and many housing programs use this figure. Thus, for a three bedroom home for sale, the assumed household size is 4.5 persons.

HUD adjusts median incomes based on family sizes in the following manner:

Number of Persons in Family	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>
Percentage Adjustments	70%	80%	90%	100% (Base)	108%	116%	124%	132%

Rather than round up or down, the family size adjustment for a 4.5 person household is calculated by "interpolating" between the 100 percent figure for a four person household and the 108 percent for a five person household. Thus, use 104 percent.

We apply this adjustment factor to the area median income of \$58,000, which computes to \$60,320. Thus, we use \$60,320 as our starting point.

One other note: the family size adjustments, even if they involve a half number such as 4.5, should also be used to identify qualifying households for this affordable home, i.e., the maximum qualifying income for a household seeking to buy this three bedroom unit should also be \$60,320.

Step 3. Calculate 80 percent of Step 2.

Commentary: This equates to \$48,256 per year. Note for the mathematically inclined: the family size adjustment in Step 2 and the 80 percent calculation in Step 3 can be combined into a single adjustment factor (83 percent in this case).

Step 4. Calculate 30 percent of Step 3, representing the portion of a family's income that is assumed to be used for housing.

Commentary: This equates to \$14,476. Note: within the Blue Ribbon Commission, it was debated whether § 8-30g, by referring to affordable housing as that for which a qualifying family pays no more than 30 percent of its income, requires the developer to include a 30 percent calculation as used in this Step 4, or prohibits a developer from charging more than 30 percent of the actual income of the household applying for the unit. This debate was not resolved within the Blue Ribbon Commission. This calculation uses the former method, on the theory that it is unrealistic to expect that the sale price of a single-family home will vary substantially based on the actual income of an unknown, future purchaser. Put another way, § 8-30g may be understood not as a housing subsidy program in which the government pays the remaining 70 percent of housing costs, but as a maximum price/rental formula that limits what an affordable housing developer may charge, by incorporating the 30 percent assumption into the formula.

Step 5. Divide Step 4 by 12 months to determine the maximum monthly payment for housing.

Commentary: This equates to \$1,206 per month.

Step 6. Determine by reasonable estimate monthly expenses, including property taxes, insurance, heat and utility costs, excluding telephone and cable television, but including any common interest ownership or similar fee required of all unit purchasers or owners.

Commentary: Again, the key words here are "reasonable estimate." Public housing authorities that administer Section 8 and other housing programs typically publish estimates of heat and utility costs in particular locations, and referencing such figures is appropriate in this case. The Department of Social Services also has information on utility costs. Remember that utility estimates vary based on household and unit size and should be re-examined at the time of a unit resale. For the sake of this example, let us assume that the cost for these items is \$400 per month, itemized as follows:

Property taxes	\$175	
Heat and utilities	125	
Insurance (homeowners)	75	
<u>Association fee</u>		<u>25</u>
Total	\$400	

This leaves \$806 available for mortgage principal and interest.

Step 7. Subtract Step 6 from Step 5 to determine the amount available for mortgage principal and interest.

Step 8. Apply the Step 7 amount, commercially-reasonable mortgage terms in order to determine the financeable amount.

Commentary: At the current time, based on market conditions, a reasonable assumption would be a 30 year mortgage at an interest rate of 7.5 percent. Determine what mortgage amount can be obtained using a 30 year term and a 7.5 percent interest rate. Bear in mind that many lenders offer below-market interest rates to buyers in affordable housing programs.

Step 9. Determine downpayment.

Commentary: The Blue Ribbon Commission recommended to the Department of Economic and Community Development that it consider, in regulations that will implement Public Act 00-206, a downpayment of 10 percent as a reasonable guideline. Utilizing this recommendation for the purposes of this example, one would take 10 percent of the financeable amount determined in Step 8 as the downpayment.

Step 10. Add Steps 8 and 9 to determine the maximum sale or resale price.

In order to perform the same calculation for units to be sold at 60 percent of area or statewide median income, follow all of the above steps, except in Step 3 use a 60 percent calculation instead of an 80 percent calculation.

III. CALCULATION STEPS FOR TWO BEDROOM RENTAL UNIT IN THE HOLLYWOOD DEVELOPMENT AT 80 PERCENT OF AREA OR STATEWIDE MEDIAN.

Steps 1 through 5. The first four steps are identical to those used above for a sale unit, except that this example assumes a two bedroom unit, and thus a three person household. This yields a maximum monthly outlay of \$1,044 per month.

Step 6. Determine the Fair Market Rent for a comparable unit as published by HUD.

Commentary: For this step, you should refer again to the HUD website. A copy of the fair market rents for Connecticut, including Hypoville (assumed to be in the Waterbury MSA), are attached. In recording these tables, bear in mind that the numbers range from "zero" to 4 bedrooms; be sure you count the zero bedroom (i.e., studio) unit. A two bedroom rental unit in Waterbury has a maximum rent of \$758 per month.

Step 7. Multiply the HUD Fair Market Rent for a three bedroom unit by 120 percent, which calculates to \$909.

Step 8. The maximum monthly payment for occupants of this rental unit must be the lesser of the calculations in Steps 5 and 7, and thus the limit is \$909 per month. Note that the \$909 figure is, effectively, about the equivalent of 62 percent of the area median as adjusted for family size.

Step 9. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television, but including any fees required of all tenants.

Commentary: As referenced above, many public housing authorities that administer Section 8 and other housing programs publish estimates of utility costs for the particular municipalities, and it is reasonable to use those estimates. The Department of Social Services also is a source of information on utility estimates. Otherwise, estimates can be created by contacting local utility companies to determine average bills based on the size of the unit or the household. Utility estimates for rental units should be re-examined annually. Any required fee, such as a storage fee, so long as it is required of all tenants and is not optional, should be included in this estimate of monthly expenses. For this example, assume \$125 per month.

Step 10. Deduct the estimate of tenant-paid utilities from the rent determined in Step 8. This yields \$784, which is the rent (the functional equivalent of the "contract rent" in the Section 8 program) that the developer/owner may charge for this two bedroom rental unit.

Commentary: In order to perform the 60 percent calculation, use the same steps as those listed above, except (1) substitute 60 percent for 80 percent in Step 3, and (2) the fair market rent should not be adjusted by the 120 percent factor as in Step 7 above.

SPEAKER PROFILES

ERIC D. COLEMAN has been a State Senator representing the Second District in Hartford and Bloomfield since 1995. Prior to that he served as a State Representative for six terms. He serves as Senate Chair of the Select Committee on Housing, and served as co-chair of the Blue Ribbon Commission to Study Affordable Housing.

PATRICK J. FLAHERTY has been a State Representative since January 1993 representing the Connecticut General Assembly's Eighth District, including the towns of Columbia, Coventry, Lebanon, and Vernon. He serves as the House Chair of the Select Committee on Housing and he also serves on the Finance, Revenue and Bonding Committee, and the Education Committee. Between the 1999 and 2000 sessions, he served as the co-chairman of the Blue Ribbon Commission to Study Affordable Housing.

DIANE W. FOX is the Town Planner of Greenwich, Connecticut. She has served in that position since 1995 and has worked for the Town since 1981. She is a member of the American Institute of Certified Planners and the Connecticut Chapter of the American Planning Association. She served as a member of the Blue Ribbon Commission to Study Affordable Housing.

SONYA "SONNY" GOOGINS was first elected to the House of Representatives in 1994 for the Thirty-First District, representing the Town of Glastonbury, and was re-elected in 1996 and 1998. She recently was appointed by House Republican leadership to serve as the Ranking Member of the Housing Committee. She is also former member of the Planning and Development Committee. She has been involved with housing issues for over 20 years, dating back to her time as an eight-term member and chair of the Glastonbury Town Council and throughout her time as chair of the Capital Region Council of Governments.

MARY-MICHELLE ("Mikey") HIRSCHOFF is legal counsel to the Connecticut Conference of Municipalities ("CCM"). She assists CCM in informing municipalities about how to comply with the Affordable Housing Land Use Appeals Act as interpreted by Connecticut's courts, and represented CCM as an amicus curiae in Kaufman v. City of Danbury. She has served on her local planning and zoning commission and as the overall coordinator of the process leading to adoption of her Town's new Plan of Conservation and Development.

TIMOTHY S. HOLLISTER is a partner in the Hartford office of the law firm of Shipman & Goodwin LLP, where he concentrates his practice in land use, environmental, and municipal law. He has represented numerous applicants in affordable housing applications and is a frequent speaker on the Affordable Housing Land Use Appeals Act. He is currently a Regional Vice President and former chair of the Land Development, Planning and Zoning Section of the International Municipal Lawyers Association. He served as a member of the Blue Ribbon Commission to Study Affordable Housing, and chaired the Zoning Regulations Subcommittee.

BRIAN J. MILLER is the Director of Development Services for the Town of Berlin, having served in that position since 1994. He has also been a planning consultant, with assignments for public and private clients, including several affordable housing projects. He is a member of the American Institute of Certified Planners and the Connecticut Chapter of the American Planning Association, and served as a member of the 1999 Blue Ribbon Commission to Study Affordable Housing.

ROBIN MESSIER PEARSON is a shareholder in the firm of Levy & Droney, P.C. in Farmington, Connecticut. She practices in the area of land use law and has represented applicants, both for-profit and non-profit, as well as municipalities, with regard to applications under the Affordable Housing Land Use Appeals Act. She has lectured extensively on land use issues throughout the State. She served as a member of the Blue Ribbon Commission to Study Affordable Housing, and chaired the Affordability and Enforcement Subcommittee.

RAPHAEL PODOLSKY is an attorney and housing advocate with the Legal Assistance Resource Center of Connecticut, which is the advocacy office of Connecticut's legal aid and legal services programs. In that capacity, he represents low and very low income renters and home owners. In addition to his membership on last year's Blue Ribbon Commission to Study Affordable Housing, he was a member of the original Blue Ribbon Commission on Housing in 1988 and 1989 and was involved in the passage of P.A. 89-311, now codified as Conn. Gen. Stat. § 8-30g.

RICHARD W. REDNISS was a member of the Governor's Blue Ribbon Commission to Study Affordable Housing and served on the Zoning Regulations Subcommittee. He has over 20 years experience working with municipalities to enact zoning regulations that encourage affordable housing, historic preservation, open space, adaptive reuse, clustering, mixed use developments, shared parking, and other innovative land use strategies.

CHRISTOPHER J. SMITH is a member of the law firm of Pullman & Comley, LLC, where he practices zoning, planning, wetlands, and environmental law. He has represented proponents, opponents, and a municipality concerning affordable housing applications. He is immediate past chair of the Planning and Zoning Section of the Connecticut Bar Association. He has served on municipal and land use agencies including a conservation and inland wetlands agency, zoning board of appeals, and water pollution control authority. In addition to recently serving on the Blue Ribbon Commission to Study Affordable Housing, he served on the Connecticut General Assembly's Wetland Task Force in 1996.

PHILIP TEGELER is the legal director at the Connecticut Civil Liberties Union Foundation, a branch of the American Civil Liberties Union. He has been active in housing and school desegregation litigation including the NAACP v. Milford and Sheff v. O'Neill cases. He has also co-authored briefs in a number of affordable housing appeals cases including the West Hartford Interfaith and Christian Activities Council, Glastonbury cases. He Tegeler is a graduate of Columbia Law School and serves as an adjunct professor at the UCONN Law School.

DENISE VIERA has worked as a Community Builder in the Hartford office of the U. S. Department of Housing and Urban Development. From 1994 to 1998, she was the Executive Director of the Connecticut Fair Housing Center. She served as a member of the Blue Ribbon Commission to Study Affordable Housing.

Moratorium Procedural Requirements for Affordable Housing

*Brian J. Miller, AICP
Director of Development Services, Town of Berlin*

1. Housing Equivalent Points awarded upon issuance of Certificate of Occupancy.
2. Housing Equivalent Points offered for:
 - Newly constructed units in an affordable housing development, as that term was defined at the time of the affordable housing application, for which a CO was issued after **July 1, 1990**.
 - Units subject to deed restricted imposed after **July 1, 1990**, which would preserve the units as affordable housing for 40 years.
3. Commissioner of Economic and Community Development shall adopt regulations for the procedure to be followed by a municipality to obtain a moratorium, including the method of documentation. However, a municipality may apply for a moratorium prior to the adoption of such regulations.
4. Municipality must apply to the Commissioner of Economic and Community Development for a "Certificate of Affordable Housing Completion." Must include documentation of the accumulation of Housing Equivalent Points. DECD to adopt regulations to implement this process.
5. Commissioner has 90 days to approve or reject application.
6. Commissioner shall issue a written statement of reasons for approval or rejection.
7. If approved, shall cause a Certificate of Affordable Housing Project Completion to be published in the Connecticut Law Journal.
8. Housing Equivalent Points can be accumulated by a municipality, even while they are under a moratorium.
9. Housing Equivalent Points shall be subtracted for any affordable dwelling unit that on or after July 1, 1990 was affected by any action taken by a municipality that caused such dwelling unit to cease being counted as an affordable unit.

Moratorium Example – Town of Hypoville

Number of Dwelling Units as per 1990 US Census 5,000

100 Housing Equivalent Points needed for 3 year Moratorium (2% of # of units at time of last census)

Proposed Hollywood Development

100 total Units - 50 Single-Family and 50 Rental

30 Affordable Units, 16 rental and 14 single-family ownership

The Housing Equivalent Points to be generated by this proposed development is as follows:

Unit Type	Housing Equivalent Points	# of Units Proposed	Total Housing Equivalent Points
Ownership; Affordable @ 80%	1.0	7	7.0
Ownership; Affordable @ 60%	1.5	7	10.5
Rental; Affordable @ 80%	1.5	8	12.0
Rental; Affordable @ 60%	2.0	8	16.0
Market units	0.25	70	17.5
Total		100	63.0

Units of proposed development could be added to previous Affordable housing built since 1990.

In 1997 the appeal of a denial of the Garden Estates Manor development, a 60 unit family affordable rental complex was upheld by the court. Garden Estates Manor complied with the definition of an affordable housing development at that time, with 25% of the units affordable to families at or below 80% of the median family income. Garden Estates Manor would produce the following Housing Equivalent Points:

15 Affordable rental Units (15*1.5)	22.5 Points
45 Market Units (45 *.25)	<u>11.25</u>
Total	33.75

Therefore; the proposed development, when added to the existing development would generate 96.75 Housing Equivalent Points, only 3.25 units short of the moratorium.

The "Affirmative Fair Housing Marketing Plan"

Legal basis

Required by Public Act 00-206, Section 1 (a) as part of the "affordability plan" to be submitted with each affordable housing application.

Requirement applies to all units – not just affordable units.

Elements of the affirmative fair housing marketing plan

Elements are not specifically defined, but P.A. 00-206 incorporates the concept of the "affirmative fair housing marketing plan" required for state-assisted developments in Conn. Gen. Stat. § 8-37ee(b):

"an affirmative fair housing marketing plan shall have provisions for recruitment of an applicant pool that includes residents of municipalities of relatively high concentrations of minority populations."

Regulations of Conn. State Agencies § 8-37ee-300 further describe the "affirmative fair housing marketing plan" as follows:

The plan shall include all of the techniques which [recipients] intend to employ to assure that marketing is broad-based and that prospective buyers and/or renters of varied income groups, including persons with physical disabilities would feel welcome to apply.

For guidance on specific techniques to be included in the plan, see the Connecticut Affirmative Fair Housing Marketing & Selection Procedures Manual, set out at CT regulations § 8-37ee-300 to 314. Some of these techniques include:

Analysis of census and other data to identify racial & ethnic groups least represented in local population.

Announcements/advertisements in minority publications & other media.

Announcements to social service agencies and other "community contacts" serving low income minority families in the region (including churches, civil rights organizations, housing authorities, legal services organizations, etc.).

Provide assistance to minority applicants in processing applications (either directly or through an existing housing counseling organization).

Focus marketing efforts on geographic area of high minority concentration within the housing market area.

Begin affirmative marketing efforts prior to general marketing of units; repeat again during initial marketing and at 50% completion.

Avoid application procedures that disadvantage people with disabilities or persons with inadequate transportation.

Avoid selection preferences for local residents.

Strategies to enhance success of affirmative marketing

Target Section 8 voucher families:

- guaranteed rent paid by public housing agency (PHA)
- Affordable Housing Appeals Procedure rents now targeted to Section 8 families
- post openings at the city public housing authority
- post openings at regional office for the state Section 8 program

Utilize existing housing mobility programs to expand pool of eligible applicants

- Hartford area: Housing Education Resource Center (860-296-4242)
- New Haven area: HOME, Inc. (203-562-4663)
- Bridgeport area: Connecticut Legal Services (203-336-3851)

Related laws

The Connecticut Zoning Enabling Act requires town zoning regulations to "promote housing choice and economic diversity in housing, including housing for both low and moderate income households," and to "encourage the development of housing opportunities, including opportunities for multifamily dwellings...for all residents of the municipality and the planning region." Conn. Gen. Stat. § 8-2

Connecticut housing laws require that "each entity participating in any program administered by a housing agency...shall have an affirmative duty to promote fair housing in each housing development that is assisted or supervised under any provision of this title." Conn. Gen. Stat. § 8-37ee

The federal Fair Housing Act bars discrimination on the basis of race, family status, disability, etc., and requires all recipients of federal funds to "affirmatively further fair housing". 42 U.S.C. §§3604, 3608.

Connecticut fair housing laws prohibit discrimination based on source of income, including Section 8. Conn. Gen. Stat. § 46a-64c(a). See *CHRO v. Sullivan Associates*, 250 Conn. 763 (1999).

P.A.#00-206
CGS 8-30g (c)

"Any commission, by regulation, may require that an affordable housing application seeking a change of zone shall include the submission of a conceptual site plan describing the proposed development's total number of residential units and their arrangement on the property and the proposed development's roads and traffic circulation, sewage disposal and water supply."

- P.A. 89-311 created affordable housing appeals procedure.
- P.A. 91-392 directed municipalities to adopt zoning regulations that promote housing for low and moderate income households.
- As of February 2000 almost 100 of the 169 municipality have failed to adopt inclusionary zoning regulations.
- Court decisions have overturned municipal denials when no site plan was provided (i.e. Kaufman vs Danbury) and upheld denials where detailed plans and data were provided (i.e. Fairfield 2000 Homes Corporation vs Newtown).
- New legislation allows commissions to require a conceptual site plan for 8-30g zone change applications by regulation.
- Conceptual plans for "Hollywood" should contain: some topography (flat site) including wetlands data; internal road and drive layout demonstrating appropriate preliminary grades, turning Radii, circulation and parking; preliminary size and location of stormwater detention basin with preliminary calculations based upon the proposed site plan and soils types; 50 single family homes and 50 unit apartment building; and schematic connections to sewers and water lines.
- A conceptual redesign of the intersection on Flaherty Street that will experience at reduction in LOS that mitigates the situation (assuming a simple solution is available i.e. traffic light, turning lane, improve sight distance etc.).
- A brief analysis that ensures that the sanitary sewer lines remaining capacity after development could accommodate a reasonable build out consistent with Hypoville plan of development.

**COMMENTS BY DIANE W. FOX, TOWN PLANNER/ZONING
ENFORCEMENT COORDINATOR – GREENWICH, CT**

**DEVELOPMENT APPLICATIONS – WHAT MUNICIPALITIES MAY
REQUIRE**

New Section of Statute:

(c) Any commission, by regulation, may require that an affordable housing application seeking a change of zone shall include the submission of a conceptual site plan describing the proposed development's total number of residential units and their arrangement on the property and the proposed development's roads and traffic circulation sewage disposal and water supply.

The addition of this paragraph addresses issues raised in the cases of the Mutual Housing Association vs. Trumbull (1996), and Kaufman vs. Danbury P&Z (1995) where the issue of requiring a site plan submission along with a proposed zone change for affordable housing site was specifically raised.

As the court noted in the Kaufman vs. Danbury P&Z, a Zoning Commission "undoubtedly is entitled to enact regulations requiring all zone change applicants, including applicants for zone changes in connection with affordable housing development, at the time their applications are filed, to submit information that the commission will need to fulfill its duties (Sec. 8-2 of state regulations). This would indicate that information should be filed at the time of application and should consist of materials"

Further the court noted that per Sec. 8-3, while zoning commissions may require the submission of site plans for all zone change applications, Danbury's zoning regulations contain no such requirements.

(A note to all municipalities that such a requirement for site plans to be submitted along with zoning proposals should be incorporated in local zoning regulations.) However, even if a community already had regulations for Affordable Housing in place, an applicant could submit a new zoning regulation proposal.

With the passage of this section, the legislative intent is clearer that submission of site plans is required with affordable housing applications and zone changes, and addresses some issues raised in the Kaufman case.

While no definition of conceptual site plan has been detailed, or provided, the outline of such conceptual plan submission appears to include a site plan layout with the number of residential units, roads, parking and traffic circulation, sewage and water, in addition Sec. 8-2 provides other guidelines for a municipality to use in seeking sufficient information.

Identification of the buildings and floor plans to show location of the affordable units, a phasing, a sequencing plan for the actual construction of the affordable units on the site and requires restrictive covenants to be submitted at time of initial submission.

The new language (b)(1)(D)(E) also requires an applicant to submit to the Commission "a description of the projected sequence in which, within a set-aside development, the affordable dwelling units will be built and offered for occupancy and the general location of such units within the proposed development and draft zoning regulations, conditions of approvals, deeds, restrictive covenants or lease provisions that will govern the affordable units"

This addresses somewhat the issue raised in Kaufman case regarding "meaningful assurance that the applicant will build the affordable housing."

The citation of the wetlands laws (22a-36 to 22a-45) implies that wetlands, streams and waterbodies should be shown on the site plan since Planning and Zoning Commissions must have the wetland authority's final decision and report before approving project (8-3(g)).

It can be inferred that the following may be a logical submission:

- 1) **A conceptual plan, or Development Plan should be based on a survey of the property and prepared and signed by a professional architect, land surveyor or engineer licensed in the State of CT. This plan should include:**
 - a) **Location, dimension and elevations of all proposed buildings, including architectural drawings, floor plans and grading plans.**
 - b) **Location dimensions and surface treatment of all proposed parking and loading spaces, traffic access and circulation drives and pedestrian walks.**
 - c) **Location of wetlands, streams, proposed utility lines, including water, gas, electricity, sewer and transformers.**
 - d) **Source of water supply (wells, public) a showing that an adequate source of potable water is available to satisfy the needs of the proposed development and signed by the local water authority.**
 - i. **If on wells, testing of yields on flow per minute on the proposed property as well as existing yields on adjoining properties, and projected estimates on draw downs and future well yields on surrounding properties' wells to assure continued water supply may be required to address the public health issue. (Note: see Newtown decision).**

- e) **Method of sewage disposal – if on public sewer, capacity of existing lines to handle new volume and review by town sewer department of adequacy of pump systems, time of flows, and volume capacity of existing sewer line system.**
 - i. **If a private plant system is proposed requiring state approval, submission of design, flows and soil conditions to meet local and state standards is required. Soil testing, perc tests, etc. would probably be required to prove soil capability and precluding of plant or leaching fields failure. (Note that the Newtown decision upholds the commissions right to require and use information on private sewerage systems as a basis for decision).**
- f) **Drainage summary report to include existing and proposed storm water distribution, existing and proposed runoff rates, capability of off-site drainage facilities to accommodate proposed runoff rates, capability of off-site drainage facilities to accommodate proposed runoff, capability of on site soils to accommodate percolation or detention if proposed, and identification of proposed drainage structures. The need to protect water supply and water quality, as well as preclude adverse drainage impacts onto adjoining properties and streets requires a higher level of information to be submitted that was in the past.**
- g) **Traffic Impact statement or report, to verify traffic safety both within and outside the site and to determine any need for improvements off-site to handle additional traffic volume.**
- h) **Topographical information on existing and final grades to address erosion problems and estimate amount of blasting.**
- i) **Landscaping, buffer planting and natural vegetation to remain, and open space areas.**