

**REPORT OF THE BLUE RIBBON COMMISSION  
TO STUDY AFFORDABLE HOUSING**

February 1, 2000

# State of Connecticut

## BLUE RIBBON COMMISSION TO STUDY AFFORDABLE HOUSING

February 1, 2000

Hon. John G. Rowland, Governor  
Members of the Connecticut General Assembly  
State Capitol  
Hartford, Connecticut

Dear Governor Rowland and Members of the Connecticut General Assembly:

We are pleased to present to you the Final Report of the Blue Ribbon Commission to Study Affordable Housing. The Blue Ribbon Commission was established by Special Act 99-16 during the 1999 legislative session.

The Commission had a large membership and included many of the state's most experienced and knowledgeable citizens on housing issues. We have been privileged to work with such an outstanding group and commend this report to your attention.

This report is the result of extensive discussion, and sometimes spirited debate, among the members of the Commission and reflects the views of a majority of the Commission on each of the issues addressed. The Department of Economic and Community Development, the Office of Policy and Management, and the Connecticut Housing Finance Authority were represented on the Blue Ribbon Commission and participated in its subcommittees and deliberations. However, the views expressed in this report are those of the Commission and do not represent the views of any or all of those agencies.

We look forward to working with you in the coming weeks to adopt the Commission's recommendations into law.

Sincerely yours,

Sen. Eric Coleman, Chair

Rep. Patrick Flaherty, Chair

Sen. Lee Scarpetti, Ranking Member

Rep. Sonny Googins, Ranking Member

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## **EXECUTIVE SUMMARY**

### **COMMISSION CHARGE**

SA 99-16 established the 45-member Blue Ribbon Commission to Study Affordable Housing. It specifically required the commission to study:

1. The effectiveness of the affordable housing land use appeals procedure (“the procedure”),
2. The extent to which zoning regulations comply with the statutory mandates regarding housing opportunity and choice and economic diversity, and
3. Whether the current housing market meets the housing needs of low- and moderate-income people.

Attachment 1 is SA 99-16.

### **MEMBERSHIP**

The Commission consists of 34 regular and 11 ex officio members. The chairmen and ranking members of the Select Committee on Housing served as the Commission’s chairmen and ranking members. The governor and legislative leaders appointed most of the regular members, which included attorneys, land use planners, zoning officials, housing advocates and service providers, and municipal and state officials. Attachment 2 lists the Commission’s members.

### **ORGANIZATION**

The Commission organized itself into four subcommittees that addressed issues that emerged out of its early deliberations. These subcommittees dealt with the procedure, moratoria on appeals brought under the procedure, compliance with the zoning mandates mentioned above, and low- and moderate-income housing needs. The subcommittees submitted recommendations and findings to the full Commission, most of which were incorporated in this report.

## **1987-1988 BLUE RIBBON HOUSING COMMISSION**

The commission also reviewed the work of the 1987 Blue Ribbon Housing Commission, which the legislature created to develop comprehensive affordable housing strategies. At that time, rents and home sale prices were escalating beyond the reach of even moderate- and middle-income people.

That commission fulfilled its charge, issuing 51 recommendations dealing with housing programs and regulations, land use laws, and other housing-related matters. The legislature enacted many of these recommendations, including the establishment of a procedure to appeal local decisions rejecting proposed affordable housing developments. Attachment 3 contains that commission's recommendations.

## **RECOMMENDATIONS AND FINDINGS**

This Commission issued 44 recommendations each supported by specific findings. Twelve recommendations deal with housing policies and programs. These include creating a \$50 million housing trust fund capitalized by FY 2000 budget surplus, more funding for rental assistance, and new funding for several programs designed to foster housing choice and success.

The Commission also made many recommendations regarding the procedure, including instituting a new mechanism for obtaining a moratorium on appeals brought under the procedure. The other recommendations give municipalities more tools to monitor and enforce the statutory conditions imposed on affordable housing developments and provide funds to municipalities where affordable developments were completed.

The Commission recommended setting a deadline by which municipalities must comply with the statutory mandate requiring them to adopt zoning regulations to promote housing for low- and moderate-income people. It also recommended that the Department of Economic and Community Development issue model regulations to help municipalities comply with that statutory mandate.

The Commission's Zoning Regulations Subcommittee reviewed municipal zoning regulations that were specifically intended to promote affordable or low- and moderate-income housing, but it did not have enough time to determine if they realistically served that purpose. For this reason, the Commission recommended that the Select Committee on Housing study these regulations in greater depth.

## **DISSENTING OPINION**

The Commission agreed to attach a dissenting opinion by two of its members to the end of this report. The Commission did not review the opinion, and thus cannot verify its findings and recommendations.

# **BLUE RIBBON COMMISSION TO STUDY AFFORDABLE HOUSING**

## **CHARGE**

SA 99-16 established the commission to study affordable housing issues, including:

1. the effectiveness of the Affordable Housing Land Appeals Procedure (“the procedure”) and other statutory procedures governing affordable housing;
2. an examination of the extent to which local zoning regulations comply with the requirements of the Zoning Enabling Act to encourage the development of housing opportunities, including opportunities for multifamily dwellings, and to promote housing choice and economic diversity in housing, including for both low- and moderate-income households; and
3. the extent to which the current market for housing in the state meets the housing needs for very low-, low-, and moderate-income households.

## **MEMBERSHIP**

The commission consists of 34 regular members and 11 ex officio members. SA 99-16 designated the chairmen of the Select Committee on Housing the commission’s chairmen. And it designated as ex officio members the chairmen and ranking members of the Planning and Development and the Finance, Revenue and Bonding committees, the Office of Policy and Management secretary, the economic and community development commissioner, and the Connecticut Housing Finance Authority’s executive director.

(The Commission actually has 44 members since the Senate chair of the Select Committee on Housing is also the Senate chair of the Planning and Development Committee.)

The governor and legislative leaders appointed 30 regular members, according to the table below:

**Table 1: Commission’s Appointed Members and Appointing Authority**

<i>Appointing Authority</i>	<i>Number of Appointments</i>	<i>Criteria</i>
Governor	6	At least four must be chief elected officials or members of local legislative bodies from towns with populations of 65,000 or less
House Speaker	4	At least two must represent for-profit housing developers, nonprofit housing developers, or civil liberties organizations
House Majority Leader	4	At least three must represent housing authorities, fair housing organizations, or special needs housing providers
House Minority Leader	4	At least two must be members of zoning or planning and zoning commissions or planners from towns with a population of 65,000 or less
Senate Majority Leader	4	At least three must represent towns with populations greater than 65,000; people with disabilities, including AIDs; or civil rights organizations
Senate President Pro Tempore	4	At least two must be attorneys with expertise in land use law or representatives of low-income and affordable housing advocates, state housing coalitions, or the homeless
Senate Minority Leader	4	At least two must represent taxpayer advocacy groups or organizations.

The Housing Committee, the Legislative Commissioners’ Office, and the offices of Fiscal Analysis and Legislative Research provided administrative and research support.

**SUBCOMMITTEES**

The chairmen created four subcommittees to address several issues that emerged from the Commission’s deliberations and recommend ways to address these issues. The issues concerned:

1. whether municipalities’ zoning regulations were consistent with the mandate in CGS § 8-2 regarding multifamily housing and promoting housing choice and economic diversity,
2. ways to strengthen and enforce the requirements governing affordable units developed under the procedure,
3. whether municipalities should receive exemptions from the procedure under certain conditions and whether municipalities have enough incentive to create affordable housing, and
4. whether the state’s housing needs were being met.

The subcommittees met regularly from November through January and submitted recommendations and findings to the Commission in January. The four committees were Zoning Regulations, Affordability and Enforcement, Municipal Exemption, and Needs Assessment.

## MEETING DATES AND TOPICS

Table 2 lists the commission's meeting dates and topics.

**Table 2: Commission Meetings and Topics**

Date and Place	Topic
August 31, 1999, Legislative Office Building (LOB)	<p>Discussion of 1987 and 1988 Blue Ribbon Commission Findings and Recommendations</p> <p>Presentations on the Background of the Affordable Housing Land Use Appeals Procedure by the Legislative Commissioners' Office and the Office of Legislative Research</p> <p>Members' Introduction</p> <p>Commission Staff Support</p>
September 30, 1999, LOB	<p>Presentations:</p> <ul style="list-style-type: none"> <li>• Department of Economic and Community Development Programs: Tim Coppage</li> <li>• Department of Social Services Programs: Kevin Loveland</li> <li>• Connecticut Housing Finance Authority Programs, Federal Housing Laws, and Housing Market changes: Gary King</li> <li>• Housing Production in Connecticut: John Scott, Scott and Kennedy Partners</li> </ul>
October 14, 1999, LOB	<p>Needs Assessment Subcommittee Report: Jane McAlevey</p> <p>Update on zoning regulations: Tim Hollister</p> <p>Overview of CGS § 8-30g enforcement and affordability: Representative Patrick Flaherty</p> <p>Discussion of the CGS § 8-30g 10% exemption provision: Raphael Podolsky and Gary King</p>
October 27, 1999, LOB	<p>Report from Commission on Human Rights and Equal Opportunities Executive Director Cynthia Watts Elder</p> <p>Needs Assessment Subcommittee Report: Jane McAlevey</p> <p>Discussion of burden of proof and housing venues under CGS § 8-30g</p>
November 10, 1999, Avon Town Hall	<p>Subcommittee Reports</p> <p>Jeff Sager, Developer of Avon Old Farms Crossing</p> <p>Members of West Hartford Interfaith Coalition</p>
November 30, 1999, LOB	<p>Subcommittee Reports</p> <p>Housing Need Presentation—Jane McAlevey</p>
December 16, 1999, LOB	<p>Massachusetts Housing Appeals Statute:</p> <ul style="list-style-type: none"> <li>• Werner Lohe: Chairman Massachusetts Housing Appeals Committee</li> <li>• Sharon Krefetz, Assoc. Professor of Government, Clark Univ.</li> </ul> <p>New Jersey Affordable Housing Requirements:</p> <ul style="list-style-type: none"> <li>• John Payne, Professor of Constitutional Law, Rutgers Univ.</li> <li>• Peter Buschsbaum, Esq., Greenbaum, Rowe, Ravin, David and Himmel</li> <li>• Shirley Bishop, Executive Director New Jersey Council on Affordable Housing</li> </ul>
January 6, 2000, LOB	<p>Presentations by Senator Thomas Herlihy, Representative Robert Heagney, and Gurdon H. Buck, Esq, Robinson and Cole regarding proposed affordable housing development in Simsbury</p> <p>Subcommittee Reports</p>
January 13, 1999, LOB	<p>Subcommittee Reports</p> <p>Direction to staff regarding preparation of draft report</p>
January 20, 1999, LOB	<p>Review draft report</p>
January 27, 1999, LOB	<p>Finalize draft report</p>

## **RECOMMENDATIONS**

### **PROMOTING HOUSING OPPORTUNITIES THROUGH ZONING**

1. Require the Department of Economic and Community Development (DECD), in order to assist municipalities in complying with that portion of CGS § 8-2 that requires them to adopt zoning regulations to promote housing for low- and moderate-income households, to prepare model affordable housing zoning regulations. Such regulations shall address the procedural and structural aspects of affordable housing zoning regulations, such as definition of terms, elements of affordability plans, maximum rental and sale price calculations, and enforcement mechanisms. Such regulations shall serve as a guidance document and shall not dictate density or design standards for individual municipalities. DECD must complete these model regulations by December 31, 2000 in conjunction with a task force appointed by the department. The Subcommittee submits that an applicant who proposes to deviate from such regulations will need to provide a compelling reason for doing so. The model regulations, when drafted, should incorporate this understanding. (See p. 18.)
2. Amend CGS § 8-2 to require each municipality to adopt, within one year of the issuance by DECD of model regulations or December 31, 2001, whichever is later, zoning regulations that encourage housing opportunities for multifamily dwelling and that promote housing choice and economic opportunity for low- and moderate-income households. (See p. 19.)
3. The Select Committee on Housing shall conduct a study to determine if each municipality's multifamily zoning regulations provide realistic opportunities for developing this type of housing and whether the municipality's affordable and low-and moderate-income housing zoning regulations can actually be used to develop these types of housing. (See p. 20.)

### **CHANGES REGARDING THE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE**

#### ***Definitional Changes and Clarifications***

4. Delete the cross-reference in CGS § 8-30g to the definition of affordable housing in CGS § 8-39a, but incorporate the substance of that definition in CGS § 8-30g. (See p. 21.)

5. Explicitly define “set-aside development” in CGS § 8-30g (a) (1) as non-assisted housing subject to CGS § 8-30g (a) (1) and use that term wherever a distinction must be made between assisted housing (i.e., government funded) and set-aside housing. (See p. 21.)
6. Clarify that the “area median income” or “state median income” referred to in CGS § 8-30g is the median income by family size determined by the U.S. Department of Housing and Urban Development (HUD). (See p. 21.)
7. Clarify that the housing need that must be addressed under CGS § 8-30g is a regional need, not a local or statewide need. (See p. 21.)

### ***Basis for Exempting Towns from CGS § 8-30g***

8. Require DECD to determine if a municipality is exempted from appeals under CGS § 8-30g based on the total number of housing units as reported by the latest U.S. Census. (See p. 22.)

### ***Affordable Housing Development Eligibility Criteria***

9. Increase from 25% to 30% the percentage of affordable units needed to constitute a set-aside development under CGS § 8-30g. (See p. 22.)
10. Increase from 10% to 15% the percentage of units in a set-aside development that must be sold or rented to persons or families whose income is less than or equal to 60% of the lesser of the state or the area median income (AMI). (See p. 23.)
11. Require that no rental unit at the 60% affordability level in a set-aside development shall be priced higher than the lesser of the maximum rent level currently allowed or 100% of the HUD-determined Fair Market Rent (FMR) for the area. (See p. 23.)
12. Require that no rental unit at the 80% affordability level in a set-aside development shall be priced higher than the lesser of the maximum rent level currently allowed or 120% of the HUD-determined FMR for the area. (See p. 23.)
13. Prohibit, in the rental of affordable dwelling units in an affordable housing development, the imposition of maximum percentage-of-income requirements on tenants receiving governmental rental assistance that are more restrictive than those permitted under the program providing the assistance. (See p. 24.)

14. Extend from at least 30 years to at least 50 years from initial occupancy the period during which non-assisted affordable units in a set-aside development must be subject to maximum rental or sales price restrictions. (See p .24.)

### ***Procedural Changes***

15. Allow local land use commissions to adopt regulations requiring applicants for a zone change connected with a proposed affordable housing development to submit a conceptual site plan describing:
  - a. the total number of units to be developed;
  - b. how they will be arranged on the proposed site; and
  - c. the roads, traffic circulation, sewage disposal, and water supply. (See p .24.)
16. Require applicants seeking land use approvals for proposed affordable housing developments to submit an Affordability Plan that has the following elements:
  - a. designation of a person, agency, or entity responsible for administering the plan, including complying with income limits and sale or rental restrictions during the period specified in the restrictions placed on the affordable unit;
  - b. an affirmative fair housing marketing plan governing the sale or rental of the units;
  - c. an example of how the sale or rental prices of the affordable units will be calculated;
  - d. a description of the sequence in which the affordable units will be built and offered for occupancy and the general location of these units within the proposed development; and
  - e. draft zoning regulations, conditions of approval, deeds, restrictive covenants, or lease provisions that will govern the affordable units. (See p. 24.)
17. Require the DECD commissioner to adopt regulations that may include additional criteria for preparing an Affordability Plan and which shall:

- a. specify a formula for determining rent levels and sale prices, including establishing maximum allowable down payments to be used in the calculation of maximum allowable sales prices;
  - b. clarify the costs that are to be included when calculating maximum allowed rents and sale prices;
  - c. clarify how family size and bedroom counts are to be equated when establishing maximum rental and sale prices for the affordable units; and
  - d. list the considerations to be included in the computation of income under the statute. (See p. 26.)
18. When deciding an appeal under CGS § 8-30g, clarify that the court must determine, as a matter of law, whether the commission has met the last three elements of CGS § 8-30g(c)(1) regarding the burden of proof. (See p. 28.)
19. Clarify the procedure for resubmitting to a local land use commission a modification of an affordable housing development application that the commission initially denied, as follows:
- a. clarify that the commission is to determine the date of receipt of the modified application in the same way it determined the date of receipt for the original application;
  - b. require the commission to hold a public hearing on a modified application if it held a hearing on the original application, but otherwise leave the holding of a hearing on a modified application to the commission's discretion;
  - c. extend the time period during which the commission must decide on the modified application from within 45 days to within 65 days after its receipt; and
  - d. clarify that, if the inland wetlands agency must act on the modification, the commission has up to 35 days after the wetlands agency decision to act on the modified application. (See p. 28.)
20. Specify that a zoning commission or its designated authority shall have the same enforcement powers and remedies to enforce a CGS § 8-30g zoning decision as it has to enforce any other zoning decision under CGS § 8-12. (See p. 28.)

## **Moratoria**

The legislature should eliminate the current procedure for obtaining a moratorium from CGS § 8-30g appeals and replace it with a procedure containing the elements described below.

21. The time period for the moratorium should be increased from one to three years, and the requirements for participating in the Connecticut Housing Partnership or the Regional Fair Housing Partnership should be deleted.
22. Municipalities may qualify for the moratorium by earning housing unit-equivalent points that equal 2% of the total housing units reported in the latest U.S. census or 75 unit-equivalent points, whichever is greater.
23. Units completed since 1990 will receive points toward a moratorium according to the following schedule:

**Table 1: Housing Unit-Equivalent Point Schedule**

<i>Unit</i>	<i>Points</i>
Market-rate units in a set-aside project	0.25
Family* ownership units at or below 80% median income	1.00
Family ownership units at or below 60% median income	1.50
Family ownership units at or below 40% median income	2.00
Family rental units at or below 80% median income	1.50
Family rental units at or below 60% median income	2.00
Family rental units at or below 40% median income	2.50
Elderly income-restricted units	0.50

\*Family units are those for which no age restrictions have been imposed

24. A unit counts toward a moratorium when it receives its certificate of occupancy or when a newly implemented long-term deed restriction takes effect.
25. The points a municipality earns toward a moratorium must be net of demolition and net of actions that decrease and/or eliminate affordability.
26. Moratoria will not apply to proposed assisted housing developments if 100% of the units are at or below the 60% affordability level. But each unit in these developments would earn points according to the schedule above, which would count toward subsequent moratoria.

27. Moratoria do not apply to assisted housing developments of 40 units or less.
28. Moratoria do not apply to affordable housing development applications submitted to a commission under CGS § 8-30g before a moratorium went into effect. Units completed after the beginning of a moratorium may be counted toward eligibility for an additional moratorium.
29. DECD must adopt regulations specifying the procedure municipalities must follow to obtain a moratorium. The regulations must specify how towns must document the units counted toward the moratorium and how DECD will publish a notice of the moratorium. (See p. 29 for Recommendations 21-29).

### ***State Incentives to Municipalities for the Creation of Affordable Housing***

30. The state should create a \$20 million Affordable Housing Incentive Fund to reward municipalities where new affordable housing is built to adequately cover the additional services required by the housing. It should allocate the funds based on the housing unit-equivalent schedule used to determine a municipality's eligibility for a moratorium.
31. Municipalities where the number of affordable units increases by 2% of the total housing stock receive priority for open space funds.
32. The state should provide increased technical assistance to municipalities that want to build affordable housing but do not have the staff to draft the plans. (See p. 29 for Recommendations 30-32.)

### **HOUSING PROGRAMS**

#### ***Restore Capital Financing for Developing and Rehabilitating Affordable Housing***

33. The state should create a housing trust fund and capitalize it with \$50 million from the FY 2000 surplus. (See p. 36.)
34. The state should establish housing and community development policies that have clear priorities and investment strategies. These policies must include provisions that:
  - a. affirmatively further racial and economic integration, including expanding multifamily rental housing opportunities in suburban and rural communities;

- b. provide for the revitalization of urban neighborhoods, including expanding homeownership and increasing multifamily rehabilitation in the central cities; and
  - c. provide a full range of supportive housing options for people with special needs or who are at risk of becoming homeless. (See p. 36.)
35. The state should create a unified, flexible housing and community development program within the DECD by consolidating existing categorical programs. It should do this by:
- a. establishing principles for operating these programs and holding them accountable;
  - b. providing a full range of financing tools, including low-interest loans and grants that can be used for construction, gap, and long-term financing;
  - c. using nonprofit, community-oriented organizations to implement the programs and funding community loan funds;
  - d. facilitating public-private partnerships and using state funds to leverage private dollars; and
  - e. providing one simple point for applying to housing assistance programs. (See p. 37.)
36. The state should promote comprehensive, community-based planning by:
- a. funding local planning initiatives;
  - b. building on state and federal processes such as continuum of care, enterprise communities, and neighborhood revitalization zones; and
  - c. annually funding training and technical assistance for nonprofit development organizations, allowing them to build the capacity to develop and manage housing. (See p. 37.)

### ***Close the Gap Between Income, Rent, and Homeownership***

37. The state should increase funds for the Rental Assistance Program by \$30 million to serve an additional 5,000 households, restore the participant's share to 30% of income, and raise the FMRs to no less than those used under the federal Section 8 program. (See p. 38.)

38. The state should appropriate \$20 million to a “housing plus” program that should serve 2,000 households in extreme need by linking rent subsidies to supportive services. (See p. 39.)
39. When the state subsidizes economic development, it should attempt to reduce the need of its lowest-income employees for housing assistance by assuring that new jobs created by such economic development will pay wages high enough to close the gap between worker income and the costs of rental or home purchase. To accomplish this goal, economic development assistance provided by the state should be accompanied by incentives which will assure that as many jobs as possible will be full-time, that wages and benefits for new employees will be high enough to promote their economic self-sufficiency and assure affordability in their local housing market, and that companies receiving state economic development assistance will not interfere with employee rights to unionize and will permit them to do so in a simplified manner. (See p. 39.)

#### ***Fund Services that Promote Housing Choice and Success***

40. The state should appropriate funds for the full range of services needed to assure that the housing market functions fairly and efficiently and that families and individuals succeed in their housing. (See p. 43.) The table in the Findings Section lists the services and the annual funding that is needed, consisting of \$14.85 million in current funding and \$9.6 million in new funding.

The Commission recommends targeting the Employer Housing-Assisted Tax Credit at employees earning 80% or less of AMI. (See p. 42.)

#### ***Protect Existing Housing Assets and Expand Opportunities***

41. With respect to public housing:
  - a. Repeal CGS § 8-70a, which creates a pilot program for selling or leasing moderate rental housing projects.
  - b. Provide flexible one-for-one replacement requirements.
  - c. Provide operating support for state-assisted public housing so that rents do not exceed 30% of residents' incomes.
  - d. Require grievance procedure and tenant participation mechanisms in state-assisted public housing and appropriate state dollars to support tenant organizations. (See p. 46.)

42. With respect to fair housing:
- a. Add fair housing analysis to the existing site selection decision making.
  - b. Establish development funding set-asides for housing initiatives in municipalities that are not exempted from the affordable housing land use appeals procedure.
  - c. Require fair housing impact assessments for any public housing demolition, disposition, replacement, or relocation proposals.
  - d. Require the Department of Social Services to affirmatively promote fair housing choice and racial and economic integration.
  - e. Establish a demonstration program for a regional application system and region-wide waiting list for state-assisted housing. (See p. 46.)

***Assure Ongoing Analysis of Housing Needs and Create an Ongoing Participatory Planning Process***

43. The state should annually:
- a. collect and make available data that will help in the planning, development, and evaluation of housing policies and programs;
  - b. report on state-assisted housing units, including their affordability, quality, and location;
  - c. enter into a data sharing contract with appropriate sources that maintain automated data bases of private market home prices and rents throughout the state;
  - d. analyze and adjust state rental assistance standards to assure accessibility of all Connecticut communities; and
  - e. to better monitor housing affordability and economic development trends, provide access to Department of Revenue Services income data, aggregated at the block group and census tract levels. (See p. 47.)
44. Establish an ongoing, permanent forum of the full range of public and private stakeholders in affordable housing and community development to assess, review, and evaluate affordable housing needs and strategies in coordination with the legislative and executive branches. (See p. 47.)

## **FINDINGS**

### **AFFORDABLE HOUSING AND ZONING REGULATIONS**

#### ***1. Municipalities Need Technical Assistance in Order to Adopt Zoning Regulations that Promote Affordable Housing***

Drafting and adopting regulations for low- and moderate-income or affordable housing can be a difficult task. Those municipalities that have not adopted such regulations, and those that have only adopted regulations that are minimal or impractical may be lacking in guidance as to what type of regulations to adopt.

The Zoning Regulations Subcommittee notes that New Jersey has promulgated model regulations. In addition, there is precedent in Connecticut for this practice in the area of wetlands regulation, where the Department of Environmental Protection has prepared model regulations, which have been followed for the most part by Connecticut municipalities. Following on the work of the Commission, which has benefited from the wide variety of expertise and experience among its members, the Subcommittee recommends that a task force be appointed to work with the Department of Economic and Community Development (DECD) to draft such model regulations.

These model regulations need not prescribe a "one size fits all" requirement for density, design, dimensional, or use requirements, but rather should advise municipalities on such matters as how to define procedural terms in affordable housing land use regulations, such as what to require from affordable housing applicants, what to require to ensure that affordability will be maintained through covenants and restrictions, and how to be sure that appropriate enforcement mechanisms are in place.

The Subcommittee envisions that such model regulations, when issued by DECD and adopted by a municipality as part of its zoning regulations, will provide the basis for a relatively uniform statewide system with respect to the procedures and administration of affordable housing restrictions and covenants.

## **2. Municipal Compliance with the Statutory Mandate Regarding Encouraging Affordable Housing Opportunities Requires Improvement**

**Mandate.** CGS § 8-2 currently states that zoning regulations of every Connecticut municipality

shall also encourage the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under Section 16a-4a. Such regulations shall also promote housing choice and economic diversity in housing, including housing for both low- and moderate-income households...

It is apparent from the Zoning Regulations Subcommittee's research that more than half of Connecticut's municipalities have not followed this legislative direction.

(It should be noted that while the existing statute, CGS § 8-2, provides that municipal zoning regulations shall "encourage" multifamily uses and "promote" low- and moderate-income housing, the use of the word "shall" in the context of the basic statute regarding the adoption of zoning regulations must be regarded as an existing requirement that a municipality have some form of regulations addressing each type of housing.)

**Affordable Housing Regulations.** The Subcommittee's research indicates that 147 municipalities have some zoning regulation that promotes or permits multifamily dwellings, but 22 do not. Thus, 87% of municipalities have a zoning regulation that allows some form of multifamily housing in at least one location in a municipality. However, the Subcommittee would stress again that this is based on a very minimal reporting criterion and follow-up study is necessary to determine what portion of those municipalities with multifamily zoning regulations actually provide a realistic opportunity for the development of such housing.

**Multifamily Housing Regulations.** With respect to affordable housing or low- and moderate-income housing, the Subcommittee's research indicates that 71 of 169 municipalities (43%) have a zoning regulation that specifically limits a portion of developable housing units to low- or moderate-income people or households. Again, this is based on a minimal reporting criterion and is not a qualitative analysis of whether such regulations are realistic, to what land they apply, and in what zones they apply. However, the Subcommittee would make the following observations:

1. Relatively few municipalities, probably fewer than 25, can be said to have a detailed low- and moderate-income housing zoning regulation.
2. Some of the affordable housing regulations reviewed (approximately 25) apply only to elderly.
3. Several municipalities do not allow private, for-profit affordable housing development, but restrict affordable housing to either town-sponsored or nonprofit development groups.

The Subcommittee finds that the state should require each municipality, within one year of the issuance of model regulations by DECD or December 31, 2001, whichever is later, to adopt zoning regulations that encourage housing opportunities for multifamily dwellings and promote housing for low-and moderate-income households. The Subcommittee respectfully submits that it will be a beneficial process for each municipality, in the context of its own individual circumstances, to be required to address, through zoning, the need for multifamily and affordable housing.

The Subcommittee sees no need to amend CGS § 8-2 to require any greater specificity with regard to the type of zoning regulations that must be adopted. In other words, the goal of establishing a deadline is for every municipality not now in compliance to undertake the process of adopting regulations that will satisfy the statute's existing directive.

### ***3. The Affordable Housing Zoning Regulations that Towns have Adopted Require a More In-depth Review***

The Subcommittee had a daunting task, a review of the zoning regulations of 169 municipalities, and inadequate time in which to complete that task. It is for this reason that the Subcommittee adopted the most minimal reporting requirements.

However, the Subcommittee, wherever appropriate, printed and compiled the more significant affordable housing regulations from the municipalities that it reviewed. These regulations have been compiled in a binder that is on file with the Select Committee on Housing. This work suggests several areas of follow-up, including (1) determining in more detail whether the zoning regulations regarding multifamily dwellings do in fact provide realistic opportunities for development of such housing and (2) whether the adopted regulations for affordable and low-and moderate-income housing are practical and capable of actually being used in the production of housing.

## **AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE**

### ***Several Definitions Need to be Changed or Clarified***

**4. “Affordable Housing.”** The Affordability and Enforcement Subcommittee found that the reference in CGS § 8-30g to CGS § 8-39a is confusing. CGS § 8-39a uses 100% of median income to determine affordability whereas 8-30g uses 80% or 60% of median income. It is also logistically cumbersome to have to refer to another section of the statutes to fully understand the affordable housing reference in CGS § 8-30g. The legislature can clarify the statute by giving CGS § 8-30g its own self-contained definition of affordable housing without changing the meaning of the existing statute.

**5. “Set-Aside Development.”** The Subcommittee found that CGS § 8-30g would read better if the distinction between “assisted housing”, a specifically defined term, and housing whose affordability is established by deed restrictions were treated verbally in a parallel manner throughout the statute. The Subcommittee proposes this change for clarification purposes only and does not intend it to have any substantive impact.

**6. “Area Median Income.”** To facilitate an understanding of the requirements of CGS § 8-30g, the Subcommittee found that providing guidance as to the appropriate source for a determination of what constitutes “area median income” or “state median income,” including family size adjustments, would be helpful. To that end, the Subcommittee recommended that those terms be applied as determined by the United States Department of Housing and Urban Development (HUD). A specific reference should be added to CGS § 8-30g.

**7. “Regional Need.”** The Subcommittee found that the concept of “need” within CGS § 8-30g needs to be clarified and made consistent with the concept of need in the related statutory provisions of Title 8. Therefore, the Subcommittee recommended that CGS § 8-30g(c)(1)(C) be amended to include the word “regional” before “need”. This change will make CGS § 8-30g consistent with the requirements in CGS § 8-2 that municipalities adopt zoning regulations that promote housing choice and economic diversity, including housing for both low- and moderate-income households, to meet the housing needs of the region.

The Subcommittee determined that need should not be measured on either a statewide or local basis. Statewide would be too broad a standard as the economies and other demographic measurements are quite different between various parts of the state. To measure need on a local basis would simply tend to preserve the local status quo and fail to open up housing opportunities within a region. Also, both the state and HUD have long approached housing needs regionally in other contexts.

## **8. Calculating Total Housing Stock For Determining Municipal Exemption**

The Municipal Exemption Subcommittee found that DECD has had difficulty calculating an accurate total for the housing stock for each municipality every year. Therefore the total number of housing units reported in the U.S. Census Bureau's decennial census is more reliable. DECD calculates each municipality's total housing stock to determine if at least 10% of the units meet the statutory criteria for exempting municipalities from the procedure. The Commission has not otherwise recommended changes to the 10% list. However, the Commission observes that views regarding the list have varied.

The 10% list was originally devised as a way to exempt from the appeals procedure those municipalities that are host to the most housing units built and/or financed with government funds for the benefit of low- and moderate-income families. The elements of the 10% count—CHFA mortgages, deed-restricted units, and assisted units—were chosen because such data are readily available, are updated annually, and encompass most of the government funds spent in the state for housing.

The 10% list has been interpreted in two ways. First, developers have incorrectly cited it as a measure of regional housing need, which it is not. Second, and more importantly, the 10% list has been stated as the state's housing goal for each municipality's stock for affordable housing. Affordable housing units are defined in CGS Sec. 8-30g as those within the economic reach of families earning 80% or less of the median income, i.e., about 40% of the population. Having 10% of a municipality's housing stock be affordable to 40% of a region's population as a standard even if met by every municipality, would leave a 30% shortfall in meeting housing needs.

Finally, housing units that are not price restricted but may in fact be affordable have not been counted in the 10% list because the cost of such units varies from year to year, and because of the impracticality of having each municipality track and report actual market prices on an annual basis. The Commission was not able to agree on a method for counting such housing.

### ***Affordable Housing Development Eligibility Criteria***

**9. Required Percentage of Affordable Units.** The Affordability and Enforcement Subcommittee found that it would be desirable to increase the percentage of affordable units required to constitute a set-aside development, from 25% to 30%. The Subcommittee was mindful of the additional difficulty this creates for an applicant to maintain the financial feasibility of a private,

for-profit development. It is possible that the cumulative changes proposed to make even more of the housing proposed under the statute affordable, may prove to be a disincentive to private developers. However, on balance the change is recommended in light of the benefits of increasing the number of affordable units.

**10. Required Percentage of Affordable Units for People at the 60% Affordability Level.** The Subcommittee found that requiring more of the set-aside units to be priced at levels that would make them affordable to people whose incomes are less than or equal to 60% of the lower of the state or area median income (AMI) would go a long way towards reaching those who most need to have assistance with access to the state's more expensive housing cost communities.

The Subcommittee acknowledges that this recommendation may also make it less feasible for private developers to undertake set-aside housing development. However, the benefit of providing additional units for lower income households was determined to outweigh the risk.

**11. Rent Levels for Units at the 60% Affordability Level.** The Subcommittee acknowledged that the set aside-developments were originally intended to be only one component of the affordable housing anticipated to be built under CGS § 8-30g. As governmental resources for assisted housing have been significantly reduced, pressure is naturally being applied on the set-aside component to make those units more accessible to low- and very low-income persons and families.

The Subcommittee found that it is important to the purpose of CGS § 8-30g to facilitate the ability of persons and families within the Section 8 and Rental Assistance Program (RAP) programs to gain access to good housing in all communities of the state. Additionally, the accepted formulae for setting the maximum pricing of set-aside rental units will not necessarily ensure that those units will be priced at the lower ends of the affordability ranges. Reducing maximum rents at the 60% income level to the lesser of the Section 8 Fair Market Rent (FMR) levels for any given region (by bedroom size) as published annually by HUD or the current allowed level will help address this concern.

Attachment 4 provides a chart delineating the relationship of maximum FMR and current allowed rent levels, by region and by bedroom size of the units.

**12. Rent Levels for Units at the 80% Affordability Level.** The Subcommittee found, for the same reasons as expressed above, that it would also be beneficial for achieving the affordable housing goals of CGS § 8-30g, to require that there be a relationship between the Section 8 FMRs and the

maximum rental levels at the 80% income level. After much discussion, the Subcommittee recommended that maximum rental prices be held to the lesser of the current maximum rent allowed or 120% of the area FMR.

**13. Maximum Allowed Housing Costs.** Federal and state rental assistance programs now permit, in some circumstances, tenants to pay up to 40% of their income toward housing costs. This creates a situation in which a Section 8 voucher holder or a state RAP participant might qualify for an affordable unit under CGS § 8-30g according to HUD's or the state agency program's standards but be disqualified for occupancy by a landlord's differing percent-of-income rules. For this reason, owners need to be prohibited from imposing maximum percentage of income requirements that are more restrictive than those permitted under the tenant's rental assistance program.

**14. Time Period for Restricting Units.** The Subcommittee found that it would be desirable to increase the mandatory period of time in which a non-assisted set-aside unit would have to remain affordable, from 30 years to 50 years. This would further the goal of increasing the availability of affordable units in a given community and give the community more of an opportunity to meet its own affordable housing goals before units can no longer be required to remain affordable. However, should it be found that increasing this requirement would be a real detriment to the ability to long-term unit maintenance or securing financing, then this recommendation should not be pursued.

### ***Procedural Changes***

**15. Conceptual Site Plan Submission.** The Subcommittee acknowledged that not all applicants under CGS § 8-30g have submitted a conceptual site plan (as contrasted with a fully engineered site plan) with their application for an affordable housing development. While at least one judicial decision has indicated that the provision of a conceptual site plan is not necessary to come within the statute and secure an approval unless the same requirement is imposed on non-CGS § 8-30g applicants, the Subcommittee recommends that municipalities be explicitly authorized by statute to require such a plan whenever a change of zone is sought pursuant to the statute. This will assist the municipality in better understanding the implications of the proposal in the land use context.

**16. Affordability Plan.** The Subcommittee strongly endorsed the concept of requiring an applicant under CGS § 8-30g to submit as part of the application for an affordable housing development, an Affordability Plan detailing how the affordable housing will be provided, priced, and administered. This requirement will ensure that the applicant has thought through the details regarding the provision of such housing and will provide the municipality with sufficient details on the provision and administration of such

housing to enforce the Plan's provisions. The Affordability Plan should be considered part of the development's approval, and its terms will be binding on the applicant/developer and subsequent occupants of the affordable units.

In the Recommendations Section, the Subcommittee sets forth the information that must be included in the Affordability Plan. The list is not exhaustive. Indeed, the Subcommittee recommends allowing the DECD commissioner to adopt regulations that may include additional criteria for an Affordability Plan submission. The Subcommittee strongly encourages DECD to expeditiously adopt such regulations and regulations that clarify which housing costs and formulae for determining sales and rental prices by family/bedroom size are to be used to better guide applicants and municipalities and to provide uniformity in the application and administration of CGS § 8-30g. Specific requirements that the Subcommittee feels should be included in those regulations are discussed below.

The Subcommittee noted that the Affordability Plan requirements are meant to assist both the developer and municipality in structuring the proposal in compliance with CGS § 8-30g and to facilitate enforcement of the affordability provisions. They are not meant to imply that a municipality can so micro manage the development as to require the developer to definitively locate each and every affordable unit in the development, or risk denial.

In the rental context, such micro managing is impractical as rental unit locations will change as incomes of occupying tenants no longer qualify under CGS § 8-30g and substitute units must be designated as affordable units for the development to remain in compliance with CGS § 8-30g. It will be sufficient for the developer to indicate that within every category of unit type, i.e. 2-bedroom, 3-bedroom, etc., which number (if any) will be affordable and to indicate their intended location within the development.

The Affordability Plan submission requirements are not meant to empower the municipality to require that affordable units be made available in every category or type of unit proposed, in every area of the development site, or to allow the municipality to dictate where they will be located. The Subcommittee recognizes these to be marketing decisions appropriately left with the developer.

That being said, the Affordability Plan is the vehicle through which the applicant should describe the intended dispersion of the affordable units throughout appropriate areas of the proposed development, recognizing that not every area of the development or every category of unit type must have an affordable component. The municipality should accept the applicant's proposal as long as it is reasonable, complies with CGS § 8-30g, and does not stigmatize the affordable units by segregating them from market rate units.

Additionally, the Affordability Plan should set forth a general schedule of when the affordable units will be built and offered for occupancy. To comply with CGS § 8-30g, the applicant must bring the affordable units to market at the same time as the market rate units, on a pro rata basis commensurate with the percentage of affordable to market rate units in the entire development. Enforcement of the Affordability Plan provisions will insure that no municipality is left with a development where only the market rate units, and none or less than the required number of affordable units, have been made available for occupancy.

Finally, the Subcommittee notes that with the adoption of a good Affordability Plan as part of the affordable housing development approval, the municipality has the tools necessary to enforce the applicant's commitment to provide affordable housing and to insure compliance with the Act.

Attachment 5 provides model calculations for the determination of sale and rental prices.

**17. DECD Guidance.** The Subcommittee recognized that applicants and municipalities alike are often unsure how to determine the maximum allowable rent or sales price and how to administer affordable housing developments to conform with CGS § 8-30g. It agreed that there should be an easily accessed informational source to address the questions that have arisen under CGS § 8-30g regarding pricing and income qualifications to ensure uniformity in application and to avoid the abuses some claim currently exist.

The Subcommittee believed that the logical location for these guidelines would be in the Regulations of Connecticut State Agencies as promulgated by the DECD commissioner pursuant to the provisions of Chapter 54 ("Regulations"). Regulations administering or clarifying the provisions of Section 8-30g currently exist at Section 8-30g-1 through 8-30g-4. Locating this information in the Agency's Regulations, rather than in the statute, will allow for greater flexibility in making any future adjustments.

**17 a. Maximum Down Payment.** The Subcommittee responded to the concern expressed by several municipal representatives that sales prices are being set too high for the affordable units because some developers are accepting high down payments from purchasers. The high down payment may enable the developer to get a high sales price and still find income qualifying buyers, often those on fixed incomes who may have significant assets to apply to the down payment. The Subcommittee acknowledged that the use of a high down payment is contrary to the intent of the statute and poses a significant (and possibly unforeseen) problem at the time of resale. Therefore, the Subcommittee expects that DECD will adopt a regulation that will clarify that the allowable down payment for computation of a maximum acceptable sales price to comply with the statute will not exceed 10% of the sales price.

**17 b. Calculation of Housing Costs.** As previously noted, the Subcommittee recommended that DECD be able to develop additional criteria for Affordability Plan submissions if it should prove necessary to further clarify the requirements suggested for the Act. The Subcommittee also recommended that the regulations set forth the housing costs that are to be included in calculating maximum allowable rental and sales prices, to include the following:

**Table 1: Housing Costs in Calculating Maximum Allowable Rental and Sales Prices**

<i>Rental</i>	<i>Sales</i>
Rent	Periodic mortgage payments
Common charges, if the tenant is directly responsible for them	Taxes
Heat	Insurance
Utilities (except telephone or cable TV	Common charges, if common interest community
	Heat
	Utilities (except telephone or cable TV)

Heat and utility costs may be calculated by reasonable estimation.

**17c. Formulae For Sales and Rental Price Calculations.** The Subcommittee recommended that the Regulations include formulae to assist applicants and municipalities in determining the maximum allowable prices for the affordable units offered for sale or lease, by family size as related to the number of bedrooms provided. For this purpose, the Subcommittee recommended that family size be increased by 1.5 persons for each additional bedroom. Studios or efficiency units should be presumed to be occupied by one individual. One bedroom units would be credited with an allowable family income level of 1.5 persons. Where this results in a fractional number of persons (e.g. 4.5 persons in a 3 bedroom unit), the qualifying income amount should be determined by interpolating between the incomes for the next highest and lowest whole numbers (e.g. the qualifying income for a 4.5 person household is the midpoint between the incomes for a 4 and 5 person household).

**17d. Computation of Qualifying Incomes.** The Subcommittee recommended that the Regulations provide a listing of those considerations to be included in the computation of income for the purpose of qualification under the statute. At a minimum, the Subcommittee suggested that application forms and the qualification process comply with the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.* and the Connecticut Fair Housing Act, CGS §§ 46a-64b, 64c (“Fair Housing Acts”). Additionally, the criteria used by HUD as set forth in the Code of Federal Regulations as it may be amended, should be

referenced or included in the regulation's definition of annual household income.

**18. Standard of Review.** The Subcommittee discussed the implications of the recent Christian Activities Council decision (249 Conn. 566) with regard to the standard of review to be applied by the court in its review of the burden of proof in CGS § 8-30g appeals. The Subcommittee recommends inserting the words "as a matter of law" prior to the second prong. As clarified, CGS § 8-30g would confirm the court's function to undertake a plenary review, based upon the administrative record compiled before the commission, with respect to whether the commission has met its burden of proof as to each of the second, third, and fourth prongs. Without this clarification, the standard of judicial review of decisions under CGS § 8-30g could be argued to be lower than it is for traditional administrative land use decisions such as site plans and subdivisions, an incongruous situation for a remedial statute with a strong public policy purpose.

**19. Application Resubmission Procedures.** The Subcommittee found that the resubmission and review procedures for the filing of a modified proposal in response to any objections or restrictions articulated by a commission in its denial of an affordable housing development leave too short a time period for adequate review. Particularly where a public hearing is required or where the modified proposal will necessitate a resubmission to an inland wetland and watercourses agency, the resubmission and review procedures should provide sufficient time for those considerations. While the Subcommittee was mindful of the harm that too extended a review time period could have on an applicant, especially nonprofit applicants who may not have significant resources to carry financing costs or the costs of contract extensions, etc., the Subcommittee felt the proposed extensions are appropriate.

**20. Zoning Enforcement with Respect to CGS § 8-30g.** The Subcommittee discussed the expressed municipal concern that municipalities lack the tools to effectively enforce the provisions of an affordable housing development to insure that the affordable units are timely provided and otherwise comply with the terms of approval and the overall requirements of CGS § 8-30g. The Subcommittee's recommendations to require submission of an Affordability Plan and a conceptual site plan will assist municipalities in clarifying exactly what is expected of an applicant in order to comply with the development approval.

The Subcommittee believes that existing law empowers a municipality to mandate compliance with the provisions of approval through a variety of available mechanisms including cease and desist orders, the refusal to issue building or zoning permits or certificates of occupancy, the refusal to release bonds posted for completion of certain improvements, and the utilization of the

zoning enforcement remedies available to municipalities pursuant to CGS § 8-12.

### **21—29. Moratoria**

The Municipal Exemptions and Incentives Subcommittee found that municipalities have not used the one-year moratorium under CGS § 8-30g for three reasons.

1. One year was not long enough to create an incentive for municipalities to attempt to earn a moratorium.
2. A municipality could only earn a moratorium once.
3. Projects eligible to be counted toward a moratorium have to be developed under programs that are not as active as had been anticipated when the law was first enacted.

Changing CGS § 8-30g to extend the moratorium period would cause municipalities to be more proactive in creating affordable housing. The Committee also found that the U.S. Census Bureau's decennial census is more reliable as a measure of a municipality's housing stock than the methodology DECD uses to annually tally municipalities' housing stock.

### **30—32. Financial Assistance**

The Subcommittee found that some municipalities experiencing affordable housing developments should receive state financial assistance to help defray the additional cost of the municipal services they generate.

## **HOUSING PROBLEMS**

### ***Housing Needs Subcommittee Charge***

The charge directing the work of the Housing Needs Subcommittee was the third charge to the Blue Ribbon Commission "...and the extent to which the current market for housing in the state meets the housing needs of very low-, low- and moderate-income households."

### ***Today's Housing Crisis***

*"The booming economy, along with a backlog of demand caused by the four-year hiatus, has created an unprecedented need for housing in the department's history," Cuomo said. "An estimated 5.3 million families live in sub-standard housing in the United States or pay more than 50 percent of their income for rent," he said.*

*"Rents are rising at double the rate of inflation, and low-income families are being priced out of the market." Cuomo said. "Areas once marginal are being redeveloped and gentrified," he said. "Affordable Housing is a national crisis, not Republican or Democratic," he said.*

Andrew Cuomo, speaking to the press as he announced a proposal to double Section 8 vouchers, January 6, 2000.

Increasing numbers of municipalities across Connecticut are finding that they cannot house those who were raised in the community and those who serve the community. Recent college graduates earning entry-level salaries cannot afford the cost of single-family homes, even with two incomes. Teachers and municipal employees cannot afford to live in the municipalities where they work, and the elderly and those on fixed incomes cannot compete in the housing market. To help ensure the prosperity of a community, all population groups need to be represented. If adequate housing choices and opportunities are not available for all residents, regardless of age and income, the community will eventually wither due to its own exclusionary practices.

For the working poor and other low-income families, the state's economic upturn is more of the same rather than something new. Most failed to benefit from the economic climb of the late 1990s. In fact, there is evidence to suggest that many of these families lost economic ground and some were much worse off in 1998 than in 1990.

Although declining sales prices have increased housing affordability for homeowners, to some degree, there remains an extremely strong demand for, and a need to provide affordable housing options and opportunities in all areas of Connecticut. Low-, very low-, and especially extremely low-income families are faced with the dilemma of finding affordable housing. By all indications, the demand for affordable housing does not look to lessen in the foreseeable future.

### ***The Need for Affordable Housing***

Housing is a basic need for everyone. It is the single greatest expense of most families' income. Because household income changes as families change—marriage, family growth, divorce, retirement, death—and because housing costs change with the economy, it is difficult to capture precise numbers of Connecticut residents who are experiencing housing problems.

Nonetheless, the Needs Assessment Committee looked at a variety of data that substantiate that tens of thousands of Connecticut citizens are experiencing moderate to severe housing difficulties. Despite working hard to improve their lives, these Connecticut residents are living in substandard

housing, paying more than 30% of their income in rent, or living on the streets and in shelters.

The findings of this report provide an analysis of housing need that examines income categories and housing costs burdens for very low-, low- and moderate-income households. The data is based on 1997 census updated statistics.

The Subcommittee's recommendations offer policy ideas that capitalize on Connecticut's opportunities to assure a decent, safe, and affordable housing stock for its residents. We offer program ideas based on best practices and innovative thinking that utilizes government resources to stimulate private investment in Connecticut communities.

### ***Dominant Themes***

The dominant themes that run throughout the Subcommittee's recommendations are as follows:

- ✓ Leverage private sector dollars
- ✓ Encourage public-private partnerships
- ✓ View housing in context of comprehensive community-based development strategies including job creation strategies to close the housing-income gap
- ✓ Target scarce resources to those with the greatest need
- ✓ Regulatory relief by consolidating existing programs creating both greater management flexibility within agencies as well as simplifying user access to such programs
- ✓ Housing strategies should foster family stability and self-sufficiency
- ✓ Promote housing choice and vibrant, diverse communities

## ***Housing Affordability Relative to Income***

The Needs subcommittee analysis of income and housing cost indicates a need for nearly 68,000 new or rehabilitated units of affordable housing to meet the current demand of the poorest Connecticut households.

According to 1997 census update data, 502,522 Connecticut households had incomes at or below 80% of area median income (AMI). This represents 40.9% of the 1,230,243 total Connecticut households being classified as very low-, low- or moderate-income. The distribution by income group is indicated on the following table. These income groups are growing at a faster rate than the Connecticut population at large, which portends serious policy consideration.

**Table 2: 1997 Census Estimate**

Income Group	0-30%	31-50%	51-80%
# in group	159,433	132,657	210,432
Growth rate from 1990	13.2%	10.9%	54.8%

Comparing the income data to the count of units that are “affordable” to various income level households shows that we have a total of 434,607 units that *might* meet the affordable rental and ownership definition. This total includes private units in the market for both rental and ownership forms of tenancy. This is not a precise number. The count of private units includes those units that at a point in time were deemed affordable. However, it is impossible to determine at this time how many of those units would still meet the affordable definition, or if those units now serve families with incomes above 80% of AMI. This number does not take into account units that are threatened by expiring affordable housing use restrictions.

Further research must be conducted in order to more accurately identify the affordable housing units count. The Subcommittee’s recommendation to conduct regular housing market analysis will allow us to more precisely measure the need. One example of reporting that would give us more accurate data is for the Connecticut Housing Finance Authority (CHFA) to report the percentage of their loans serving each income group.

Understanding these data counting issues, the count of affordable units by type is identified on the following chart.

**Table 3: Affordable Housing Units—Total of 434,607**

<b>Type</b>	<b>Gov. Assisted Family</b>	<b>Gov. Assisted Elderly</b>	<b>Deed Restricted</b>	<b>Private Rental Affordable</b>	<b>CHFA*</b>	<b>Privately Owned Affordable</b>
	73,913	38,420	432	237,330	24,512	60,000

\* CHFA homeownership programs typically serve households above 80% of AMI. CHFA income eligibility reaches 115% of AMI for statewide programs and up to 140% AMI for loans made in targeted communities.

Subtracting the total units by the total low- and moderate-income household base in the state (502,522 families) results in a **supply shortfall of 67,915** units affordable for households between 0-80% of AMI.

**Cost Burden Analysis**

The 1990 Census cost burden analysis further supports the need faced by Connecticut households. The tables below look at cost burden for elderly and family households. Cost burden is defined as housing that costs more than either 30% of a household’s gross income or more than 50% of that household’s income.

Connecticut’s elderly residents face a severe cost burden. Family households at the lower income levels also face tremendous needs. A total of 66,182 family households face a housing cost burden. This represents 13.4% of all family households. Further, 29,906 family households face a cost burden over 50%.

**Based upon cost burden analysis, 96,389 elderly and family households between 0% and 80% of Area Median Income face a housing cost burden above 30%. Further, 48,158 households face a 50% or more cost burden.** It is clear from this analysis that much has to be done to support Connecticut households.

**Table 4: Elderly Rental Households Cost Burdens**

<b>Income Group</b>	<b>No. of Households</b>	<b>Per cent of Total</b>	<b>No. Paying More than 30%</b>	<b>Percent of Income Group</b>	<b>No. Paying More than 50%</b>	<b>Percent of Income Group</b>
<b>0% to 30% AMI</b>	39,347	47.6	23,157	58.9	13,941	35.4
<b>31% to 50% AMI</b>	18,325	22.2	10,300	56.2	3,978	21.7
<b>51% to 80% AMI</b>	9,655	11.7	4,052	42.0	477	4.9
<b>Sub Total</b>	67,327	81.5	37,509	55.7	18,396	27.3
<b>Total Elderly</b>	82,577	Not Applicable	39,783	48.2	18,633	22.6

**Table 5: Family Rental Household Cost Burdens**

<i>Income Group</i>	<i>No. Of Households</i>	<i>Percent of Total</i>	<i>No. Paying More than 30%</i>	<i>Percent of Income Group</i>	<i>No. Paying More than 50%</i>	<i>Percent of Income Group</i>
<i>0% to 30% AMI</i>	36,667	7.4	27,971	76.3	23,377	63.8
<i>31% to 50% AMI</i>	27,277	5.5	18,567	68.1	5,573	20.4
<i>51% to 80% Ami</i>	31,351	6.3	12,342	39.4	812	2.6
<i>Sub Total</i>	95,295	19.2	58,880	61.8	29,762	31.2
<i>Total Families</i>	495,404	Not Applicable	66,182	13.4	29,906	6.0

The most recent available census data comparing average city and suburban rents shows an enormous disparity in rent levels in the Bridgeport, New Haven and Hartford regions. A more recent survey of rental listings in the New Haven area confirms that the rent disparity continues, and that the vast majority of suburban rentals are far too expensive to low-income city families.

A small number of low-income families can pay somewhat higher rents for suburban housing using portable Section 8 vouchers, but as the New Haven data demonstrates, most suburban units are out of reach for these families as well. The disparity in city vs. suburban rent levels recently persuaded the Connecticut Department of Social Services (DSS) to raise Section 8 payments they administer by an additional 10% to reach more suburban rentals, but housing advocates claim even higher rates are needed

### ***Homelessness***

From October 1998 to September 1999, 16,657 different people used emergency homeless shelters, a 4.6% increase over the prior year. This included 1,635 families with 3,151 children, an increase of 12.5% over last year. Nearly 18% of those who stayed in shelters were employed; 5.6% were veterans.

Additional data provided by DSS, continuum of care plans and point in time counts of the homeless in Hartford and Fairfield County indicate that about one-third of people who are homeless in Connecticut suffer from mental illness; 50% are chemically addicted; 25% have a dual diagnosis of both chemical addiction and mental illness; and 14% have AIDS.

The growing number of people using shelters is only a partial count of homelessness. It does not account for those people who are living doubled up with family and friends because they cannot afford to rent an apartment or people living in abandoned buildings or are on the streets. It is impossible to have an accurate count of this population.

## ***Housing for Persons with Special Needs***

There are 189,700 special needs households in Connecticut that face housing problems or risk of homelessness, including frail elderly, mentally ill, physically disabled, and persons living with AIDS.

Only a fraction of people with disabilities receive Social Security income and state supplemental income. The table below documents the number of individuals in Connecticut who receive Supplemental Security Income/Social Security Disability Insurance (SSI/SSDI) benefits by type of disability, number and percentage of the Connecticut population.

**Table 6: SSI Recipients by Disability Type, Number, and Percentage of Total Disability State Population, 1998**

<b><i>Disability</i></b>	<b><i>Number</i></b>	<b><i>Percentage</i></b>
<b>Mental Retardation</b>	<b>7,580</b>	<b>22.1%</b>
<b>Mental Illness</b>	<b>12,794</b>	<b>37.3%</b>
<b>Infectious Diseases (HIV/AIDS)</b>	<b>1,303</b>	<b>3.8%</b>
<b>All Other (Blind/Physical Impairment, etc.)</b>	<b>12,622</b>	<b>36.8%</b>
<b>TOTAL</b>	<b>34,299</b>	<b>100%</b>

Source: Social Security Administration Statistics 1998

The table below represents the percentage of income recipient of SSI and State Supplemental benefits must pay to access housing in various areas of Connecticut.

**Table 7: SSI/State Supplemental Benefits As A Percentage Of Median Income And Percentage Of Income Needed For Efficiency And One Bedroom Units**

<b><i>Area</i></b>	<b><i>SSI as % Median Income</i></b>	<b><i>% SSI for Efficiency</i></b>	<b><i>% SSI for 1 Bedroom</i></b>
<b>Bridgeport</b>	<b>21.5%</b>	<b>60.0%</b>	<b>78.1%</b>
<b>Danbury</b>	<b>17.1%</b>	<b>86%</b>	<b>97.1%</b>
<b>Hartford</b>	<b>21.8%</b>	<b>58.2%</b>	<b>72.4%</b>
<b>New Haven/Meriden</b>	<b>22.4%</b>	<b>69.2%</b>	<b>84.9%</b>
<b>New London/Norwich</b>	<b>24.2%</b>	<b>65.7%</b>	<b>79.5%</b>
<b>Stamford/Norwalk</b>	<b>14.8%</b>	<b>103.6%</b>	<b>121.3%</b>
<b>Waterbury</b>	<b>23.4%</b>	<b>58.8%</b>	<b>79.5%</b>

At 30% of a household's income dedicated for housing costs, it is clear that the over 34,000 individuals who receive Social Security income and state

supplemental benefits due to a disability are unable to afford even an efficiency in any region of the state. Less clear is how those individuals living below the poverty level who are not on receiving Social Security disability are faring. The Department of Mental Health and Addiction Services estimates that 31,000 of the 135,000 adults in Connecticut who have a serious mental illness fall into this category.

## **NEEDS SUBCOMITTEE FINDINGS THAT SUPPORT SPECIFIC RECOMMENDATIONS**

### ***Restore Capital Financing for Affordable Housing Development and Rehabilitation***

The production of quality, affordable housing is important to Connecticut in several ways:

- Rehabilitation of blighted housing rebuilds neighborhoods, while creating affordable housing opportunities for families.
- Production of homeownership increases the investment in communities and in Connecticut.
- A diversity of housing options and prices supports a healthy economy and enables companies to attract and retain the workforce they need to grow.
- Production of housing by community-based developers increases the likelihood that the housing will meet affordability needs while respecting the character of the community.
- Stability and security of appropriate, affordable housing provides a foundation for those with special needs in helping themselves to become self-sufficient.

**33. Create a Housing Trust Fund through an investment of \$50 million from the State Fiscal Year 2000 surplus.** The Housing Trust Fund would be structured to encourage leveraging of private resources and to act as a revolving fund. The Trust Fund would create a pool of money that could be use for construction loans, gap financing, and long term financing, encouraging affordable housing and community development.

**34. Establish housing and community development policies that have clear priorities and investment strategies.** The issues of affordable housing are most successfully addressed in the context of community development. In other words, housing that is affordable and serves as an asset to a community

will be the most successful in the long-term. Investment strategies must be driven by policy priorities based on identified needs, not by political considerations.

**35. Create a unified, flexible housing and community development program within the DECD by consolidating existing categorical programs.** The current programs that support housing and community development could be greatly improved if they were consolidated and streamlined to improve the ability to package multiple sources, increase leveraging potential, shorten administrative time, and simplify application processes. These changes would reduce development costs and increase the percentage of funding that can go directly into development. Emphasis should be placed on creating outcomes, rather than processing of paperwork.

There are currently over 35 housing programs at the state level that have separate regulations and procedures. The technical work has been done to consolidate these into a single, flexible funding program. This should be implemented. In addition, the capacity to fund community development programs or multi-use projects should be added.

Many of the current programs emphasize regulating production rather than encouraging it. It is possible to restructure programs that will be flexible enough to meet the diversity of need without sacrificing the concern for quality and accountability. Projects now require multiple funding sources to be completed. If there is coordination among these sources, development timetables could be reduced and costs lowered.

**36. Promote comprehensive, community-based planning by funding local planning initiatives; building on state and federal processes such as continuum of care, enterprise communities, and neighborhood revitalization zones; and annually funding training and technical assistance for nonprofit development organizations, allowing them to build the capacity to develop and manage housing.** Nonprofit development organizations are a vital asset for affordable housing and community revitalization in Connecticut. By increasing the capacity of these organizations, it is possible to improve the quality and sustainability of affordable housing, insure accountability to the community, and increase the ability of communities to revitalize themselves.

Technical assistance provided during development of a project can decrease costs, improve quality, and shorten the development time for projects. Assistance is needed with pre-development, development, and management phases of projects, including financing, site acquisition, permitting, and construction and asset management. This project-based assistance improves the developer's ability to successfully complete the project and manage assets for the long-term benefit of the community. There are several organizations in

Connecticut that provide high quality technical assistance that results in production. These organizations could be funded to expand this assistance.

Training can also increase the capacity of nonprofit developers. By offering training on topics such as financial management, asset management, board training, and business planning, organizations are able to increase their ability to develop at a larger scale and impact.

### ***Close the Gap Between Income and Rent***

Rent subsidies provide an immediate and effective way to make housing affordable for households paying excessive amounts of their income toward housing. The benefits of rent subsidies extend to landlords and neighborhoods as well. Landlords who receive reliable rental payments are better able to maintain their properties, thus adding to the appearance and quality of life in neighborhoods.

In Connecticut, federal Section 8 rent subsidies, which are administered through local housing authorities, are the largest source of subsidies available. It is extremely difficult to access a Section 8 rental subsidy; many housing authorities report that people are on waiting lists from 2-8 years before a subsidy becomes available. Thirty-two of 33 housing authorities in Connecticut contacted in September 1999 by the Partnership for Strong Communities indicated that their waiting lists were closed. Connecticut has recently benefited from a HUD award of Welfare-to-Work rent subsidies, which will serve a population of female-headed households who are returning to work in jobs that do not pay sufficient wages to support a family.

The state also runs a successful Rental Assistance Program (RAP), administered by DSS through CAP agencies that provide assistance to 1,900 households—primarily serving families with children and the elderly. Waiting lists for RAPs remain closed, with 3,750 households on a waiting list.

***37. Increase Funding for the State Rental Assistance Program (RAP) by \$30 million, and Assure that RAP FMRs are no Less Than the Section 8 Levels.*** Increasing the RAP by \$30 million (essentially doubling the current funding level) will allow an additional 5,000 households to be served every year. Given the growth of households living below 30% of AMI, additional resources targeted to providing housing stability have reverberating effects for the social welfare of Connecticut. Families whose lives are stabilized in safe, secure housing provide greater opportunities for their children's health and education.

Families with state-funded RAP certificates have even fewer housing choices outside of segregated high poverty urban neighborhoods. The RAP Program is highly concentrated in urban areas, in part because rents in the program have been frozen at 1990 levels, well below the rates allowed for Section 8 rentals. (A

notable example of this urban concentration is in Fairfield County, where in 1996, 97% of certificates in the Greater Bridgeport area were located in the city of Bridgeport. In the New Haven area, the 1996 data shows that 86% of certificates were located in New Haven, West Haven, and Meriden.)

Rents available to RAP certificate holders have continued to decline relative to actual rents and in relation to the HUD Section 8 FMR, which measure the 40th percentile of available rents for the region. For 1999-2000, RAP rents for a 3-bedroom apartment in the Bridgeport area were 87% of the base FMR established by HUD and only 79% of the Section 8 rents permitted by DSS. In the New Haven area, RAP rents were 82% of the base FMR established by HUD and only 74% of the Section 8 rents permitted by DSS.

**38. Appropriate \$20 million to Housing Plus, a Program of Rent Subsidies Linked to Support Services.** Housing Plus is new initiative that will assist families and individuals to obtain housing and services in order to live stable, productive lives. Providing a household with a subsidy and then connecting the household with support services costs approximately \$10,000 annually. While this cost may appear high, it is much cheaper than emergency or institutional care for vulnerable populations. Funding for DSS in the amount of \$20 million at the DSS for Housing Plus would allow approximately 2,000 households to receive rent subsidies coupled with supportive services as needed. Support services may include but are not limited to employment training and education, employment counseling, employment supports, mental health services, AIDS services, treatment for addictions, housing mobility counseling, and tenant responsibility training. Households with incomes up to 50% of AMI but no greater than 50% of statewide median income would be eligible for housing assistance, with priority given to households whose income is less than 25% of AMI.

**39. The State Should Reduce Reliance on Housing Assistance by Adopting Policies That Assure That the People Have Adequate Incomes. The Policies Must Promote Good Jobs Paying Living Wages and Providing Full Benefits. State Agencies Must Provide Incentives That Promote Self-Sufficient Wage Jobs That Will Actually Close the Gap Between Income, Rent, and Home Purchase For Full-Time Underpaid Low Wage Workers.** In 1995, the State of Connecticut created DECD. This new department merged the Department of Housing and the Department of Economic Development. The State did this in recognition of the fact that people's ability to afford housing is intimately tied to their income. Said another way, if the state could create more jobs, there could be less reliance on subsidized housing programs. This report recognizes that the economy and housing are related. The Commission suggests the state needs to go further in defining how economics and housing are tied together.

DECD in their presentation to the Blue Ribbon Commission stated they are committed to: "Housing, Jobs, and Healthy Communities." They offered statistics about the 'health' of the state's economy, for example an all-time low unemployment rate of 2.1%; a growth rate of 5.3%; and business confidence at an all-time high." What these numbers don't tell is who is this economy benefiting? Specifically, is the state creating good jobs? Jobs that are full-time, offer health insurance and pensions and pay a livable or self-sufficiency wage?

Unfortunately, the trend in Connecticut is no different than elsewhere in the nation today. We see indicators of a strong economy, but not an economy that is strongly benefiting large numbers of workers or the general population. Study after study reinforces this same theme. Quoting from a recent report entitled *The Policy Shift to Good Jobs*, "The standards, mostly enacted within the last five years, range from wage and health insurance requirements to full-time hours rules. They were found in 26 cities, 16 states, and four counties. They span almost every kind of incentive, from property tax abatements and training grants to enterprise zones and industrial development bonds."

An example might be the Warbourg, Dillon, Read (Swiss Bank) subsidy and proposed subsidy from the state. Janitors who clean the Swiss Bank in Stamford earn \$6,976 per year. This is because the jobs are primarily part-time, not full-time, pay no benefits, and are poverty wage jobs. The state should not encourage job creation in this manner with taxpayer subsidies. Rather, we should mandate that all relevant departments in the state who are involved in development deal making mandate that in exchange for tax relief and other subsidies, we need good job creation. The kind that will make it so that the company in question helps end the housing crisis by paying their workers a decent, family supporting wage. In the case of Swiss Bank, converting 40 plus part-time janitors to full-time workers at a decent wage with benefits would mean that many less people who have to rely on subsidized housing programs of the state.

Continuing with a passage from the national report entitled *The Policy Shift to Good Jobs*:

***"I am amazed at the breadth of this trend," said Good Jobs First Director Greg LeRoy. "It strongly suggests a trend back to basics: economic development starts with raising people's living standards. Next, we need to be sure that the standards are enforced and evaluated for effectiveness."***

Collectively, the standards represent a major policy shift in state and local economic development, with public officials increasingly requiring job-quality quid pro quos in exchange for subsidies. Compared to "living wage" ordinances (of which there are now 40), the study finds that wage standards applied to development subsidies are more likely to be pegged to labor-market rates, and

are therefore higher and more varied as a group. They also cover more workers. More than half the jurisdictions apply a standard to more than one incentive program or to total development assistance above a fixed-dollar threshold, beginning between \$5,000 and \$100,000.

The survey found three general types of wage standards: those based on a multiple of federal subsistence measures such as the minimum wage or family-poverty line; those set at fixed dollar amounts; and those based on local market wages. Generally, those wages pegged to the poverty line are lower and those tied to the market are higher.

Half of the jurisdictions either require or encourage subsidized employers to provide healthcare. Some provide for lower wage standards when health care is provided.

The following jurisdictions apply job quality standards to one or more economic development incentive program ("†" indicates that the standard is part of a living wage law covering both contractors and incentives, "‡" indicates a living wage law covering incentives only):

**Table 8: Jurisdictions Applying Job Quality Standards**

<u>Cities</u>	<u>Counties</u>
Auburn & Lewiston, Maine	Dane County, Wisconsin †
Cambridge, Massachusetts †	Indian River County, Florida
Columbus, Ohio	Santa Clara County, California‡
Dallas, Texas	Shelby County, Tennessee
Des Moines, Iowa ‡	
Detroit, Michigan †	<u>States</u>
Duluth, Minnesota ‡	Arizona
Fort Worth, Texas	Colorado
Gary, Indiana	Florida
Hartford, Connecticut †	Iowa
Houston, Texas	Kansas
Indianapolis, Indiana	Louisiana
Los Angeles, California †	Maine
Madison, Wisconsin †	Michigan
Memphis, Tennessee	Minnesota
Minneapolis, Minnesota ‡	Mississippi
Mission, Texas	Missouri
Oakland, California †	New Jersey
St. Paul, Minnesota ‡	North Carolina
San Antonio, Texas ‡	Oklahoma
San Diego, California	Texas
West Hollywood, California †	Washington
Winston-Salem, North Carolina	
Ypsilanti, Michigan †	
Ypsilanti Township, Michigan †	

Given that the state took the initiative and the lead to merge housing and economic development, it is only appropriate for the Commission to make recommendations that respond to—and make recommendations about—the link between the economy, jobs, wages and the need for state funding for housing programs.

**40. Fund Services That Promote Housing Choice and Success**

The table below identifies the appropriations needed to fund the full range of services needed to assure that the housing market functions fairly and efficiently, and that families and individuals succeed in their housing.

**Table 9: Housing Program Recommendations**

<i>Service</i>	<i>Annual Appropriation or Authorization</i>
Increase fair housing enforcement and discrimination testing	\$1,000,000
Create mobility counseling fund	300,000
Double landlord-tenant mediation funding	800,000
Double rent bank funding	1,500,000
Supportive Housing Pilot Initiative*	2,000,000
Create capacity building for nonprofit developers	1,000,000
Community-based planning	500,000
Create Beyond Shelter (follow-up services for homeless people)	1,000,000
Fund Pre- and Post-Homeownership Counseling Programs (six programs)	450,000
Maintain public funding for emergency homeless shelters and transitional living programs	12,700,000
Fill funding gap for AIDS Residence Programs	1,200,000
Raise annual limit on the Employer-Assisted Housing Tax Credit and increase the annual amount of credit per employer to \$200,000 a year	2,000,000

\*The \$2 million for the program is to leverage \$8 million from federal and other sources.

The data for total housing need in the state tell only part of the story. The shortage of affordable housing is even greater in suburban towns surrounding our major cities. The annual affordable housing report prepared by DECD shows the low number of government assisted family rental units available in suburban areas. The private rental market is also not providing housing for lower income families in many suburban communities.

Supportive housing—essentially affordable housing connected to support services—has demonstrated long-term cost benefits to the state. For individuals and families who are homeless or at risk of becoming homeless, subsidies that link them with supportive services provide the opportunity for greater stability.

***Fair Housing Enforcement and Discrimination Testing: \$1 Million.*** In addition to expanded rental housing production in the suburbs, and higher suburban rents in the Section 8 and RAP programs, the Committee found a significant need to address some of the other reasons for the lack of access to suburban housing for many lower income families. Many of these issues were addressed in the 1999 State of Connecticut Analysis of Impediments to Fair Housing. As noted in the HUD-required Analysis of Impediments, continuing discrimination against families with children, people of color, and families using government rental vouchers, contribute to the levels of segregation affecting our state.

The presentation made to the Commission by staff of the Commission on Human Rights & Opportunities (CHRO) showed the need for additional investigative resources to handle housing discrimination complaints. Currently, the CHRO housing investigation division has only two full-time

investigators. The Blue Ribbon Commission recommends at least one additional full-time investigator. Without an adequate administrative remedy for victims of housing discrimination, the only remaining option is to hire a lawyer, which most discrimination victims cannot afford.

More resources are needed for fair housing testing and investigation. Currently, the nonprofit Connecticut Fair Housing Center conducts fair housing audit testing in the Hartford and New Haven areas on an annual budget of \$300,000. An additional \$800,000 would allow the Center to expand its services statewide and include mortgage lending testing and outreach and education on fair housing mortgage lending.

**Increase Mobility Counseling Fund by \$300,000.** Another important way of expanding access to housing outside of segregated neighborhoods is the use of housing mobility counseling. These programs provide tenants with Section 8 vouchers information about new communities and assistance with the process of finding housing, applying, and securing a housing unit in suburban towns. Research on housing mobility programs in Chicago and other cities has shown significant benefits to families and children from moves to more integrated, lower poverty areas. The only two housing mobility programs currently funded in Connecticut, in New Haven and Hartford, meet a small portion of the need for mobility counseling services. For example, the New Haven program assists fewer than 100 tenants per year, at an annual cost of \$100,000.

**Double Landlord-Tenant Mediation Funding: \$800,000 in Total Funding.** This program is part of the eviction prevention program and is operated by 14 community based nonprofit agencies. The program fosters better communication between landlords, and tenants and reduces the costs of homelessness and evictions to tenants, landlords and the state. Operated in conjunction with the rent bank program (below), the two programs currently serve 2,000 clients each year and 1,000 landlords and mortgage lending institutions. Doubling the funding to the amounts listed would allow twice as many clients and a corresponding number of landlords to be served.

**Double Rent Bank Funding: \$1.5 Million in Total Funding.** The rent bank program is part of the eviction prevention program that the state has funded for 10 years. A rent bank helps families who are in imminent danger of losing their homes make rent and mortgage payments that are in arrears.

**Fund the Supportive Housing Pilot Initiative: \$2 million.** This new initiative will provide community-based options for affordable housing and service supports to persons with mental illness and other chronic disabilities who are homeless or at risk of homelessness. It would focus on addressing unique needs of each region and integrating supportive housing into community development efforts. Two hundred units serving 220 clients could

come on line in FY 01 if \$2 million in service funding is available to leverage HUD rent subsidies. Potential leveraging: \$8 million in 5-year subsidies.

**Beyond Shelter \$1 million.** This program is designed to end the cycle of homelessness for families and individuals moving from emergency shelters and transitional living programs by providing flexible case management services. Assistance would be provided for up to one year to assure that the formerly homeless clients are fully integrated into their new homes.

**Pre- and Post-Homeownership Counseling Programs—\$450,000.** Home ownership counseling programs assist first-time homebuyers with credit readiness and then through the complexities of purchasing a home and successfully being a homeowner. Pre-home ownership counseling programs often include a fee paid by the homebuyer; lending institutions also fund home ownership programs. Additional state funds of \$250,000 will leverage additional private resources and increase success of first-time home buyers. Post-counseling programs can reduce delinquency and foreclosure rates dramatically. With \$250,000, 500 clients could receive assistance at approximately \$400 per client.

**Fill the Gap in AIDS Housing Programs at \$1.2 Million.** Connecticut has recently experienced a significant loss of federal funding for AIDS housing programs. Loss of this funding will mean the elimination of supportive housing for about one hundred individuals and families

**Maintain Public Funding for Shelters and Transitional Living Programs at \$12.7 Million.** A mix of federal and state funding provides partial financial support 44 emergency shelters and 27 transitional living programs in Connecticut. Seven additional programs receive no public support. Collectively, these programs serve 3,000 people per day, operating at near capacity.

**Expand the Employer Assisted Housing Tax Credit.** Several years ago the state passed a law creating a \$1 million tax credit to encourage employers to help their employees meet their housing needs. The law was in reaction to the previous residential real estate market peak that saw many employees being priced out of the market. The law enabled employers who contributed toward defraying down payment and closing costs in the case of employees' home purchases, or in defraying security deposit and rent payments for employees' rental housing to qualify for a dollar for dollar credit off their state business tax liability.

The recommendation to expand the program would help more employees take advantage of it during this high cost era we are currently in. Further, by expanding the beneficiary definition to include employees of small businesses, nonprofits, or municipalities, it would provide much needed assistance to

employees of organizations who cannot partake in the program due to minimum tax liability. Thus, a large corporation whose employees might not need the assistance could help other businesses and organizations support their employees. The Commission recommends that the program be targeted at employees earning 80% or less of the AMI. This could be a major new tool in the battle to stimulate neighborhood revitalization in our poorest communities as well as to help low- and moderate-income households gain access to housing in the suburbs.

### ***Protect Existing Housing Assets and Expand Opportunities***

#### ***41. With respect to public housing:***

- Repeal CGS § 8-70a, which creates a pilot program for selling or leasing moderate rental housing projects;
- Provide flexible one-for-one replacement requirements;
- Provide operating support for state-assisted public housing so that rents do not exceed 30% of residents' income;
- Require grievance procedure and tenant participation mechanisms in state-assisted public housing; and
- Appropriate state dollars to support tenant organizations.

#### ***42. With respect to fair housing:***

- Add fair housing analysis to the existing site selection decision-making;
- Establish development funding set-asides for housing initiatives in municipalities not exempted from the affordable housing land use appeals procedure;
- Require fair housing impact assessments for any public housing demolition, disposition, replacement, or relocation proposals;
- Require the Department of Social Services to affirmatively promote fair housing choice and racial and economic integration; and
- Establish a demonstration program for a regional application system and region-wide waiting lists for state-assisted housing.

Given the demand for 68,000 units of affordable housing—at the very minimum—it appears logical that we should assure that the existing

government assisted housing remain affordable. If housing that is currently affordable changes to market-rate housing, we need to put in place a flexible one-for-one replacement that assures no household becomes homeless or falls behind on the economic scale due to state policies.

In regard to site selection for state-assisted housing, the Connecticut Analysis of Impediments to Fair Housing points out that the bulk of assisted housing is now located in central city areas. These neighborhoods are frequently higher poverty and racially segregated. Many children in these neighborhoods attend schools that the Connecticut Supreme Court has declared unconstitutionally segregated. To provide lower income families more choices outside of segregated neighborhoods, we recommend the adoption of fair housing guidelines similar to the federal public housing site selection guidelines, which bar most new public and assisted housing in higher poverty or racially concentrated neighborhoods.

The Commission also recommends a fair housing assessment of demolition proposals affecting state-assisted housing. (For example, will the proposed demolition decrease integrated housing and school choices? Does the relocation plan provide real opportunities for relocated families to move to lower poverty, less segregated neighborhoods and towns?). These site selection and demolition guidelines will supplement the duty placed on DECD and CHFA in Public Act 91-362 to affirmatively promote fair housing.

#### ***43-44. Assure Ongoing Analyses of Housing Needs and Create a Participatory Planning Process***

There is not "one" Connecticut, and therefore we will need different strategies in different regions and communities. Connecticut's regions and communities face different conditions, widely fluctuation valuations, and demand and will continue to do so in the future.

The commission recommends that the state collect and analyze housing needs data annually. This analysis can be used to guide priority setting for federal, state, and local funding for housing and community development. The process will greatly advance public/private partnerships, which should result in channeling more and effective resources to solve housing affordability issues based on specific community needs.

**Substitute House Bill No. 6916**

**Special Act No. 99-16**

***An Act Establishing a Blue Ribbon Commission to Study Affordable Housing.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(a) There is established a Blue Ribbon Commission to study affordable housing in Connecticut. Such study shall include, but not be limited to: The effectiveness of the Affordable Housing Land Use Appeals Procedure and other statutory provisions governing affordable housing; an examination of the extent to which local zoning regulations comply with the requirements of the Zoning Enabling Act to encourage the development of housing opportunities, including opportunities for multifamily dwellings, and to promote housing choice and economic diversity in housing, including housing for both low and moderate income households; and the extent to which the current market for housing in the state meets the housing needs of very low, low and moderate income households.

(b) (1) The commission shall consist of the following members:

(A) Six appointed by the Governor, at least four of whom shall be either the chief elected officials or members of the local legislative body from municipalities with populations of sixty-five thousand or less;

(B) Four appointed by the speaker of the House of Representatives, at least two of whom shall be representatives of for-profit housing developers, nonprofit housing developers or civil liberties organizations;

(C) Four appointed by the majority leader of the House of Representatives, at least three of whom shall be representatives of housing authorities, fair housing organizations or providers of special needs housing;

(D) Four appointed by the minority leader of the House of Representatives, at least two of whom shall be members of local zoning or planning and zoning commissions or planners from municipalities with a population of sixty-five thousand or less;

(E) Four appointed by the majority leader of the Senate, at least three of whom shall be representatives of (i) municipalities with a population greater than sixty-five thousand,

(ii) persons with disabilities, including persons with AIDS, or (iii) civil rights organizations;

(F) Four appointed by the president pro tempore of the Senate, at least two of whom shall be attorneys with expertise in land use law or representatives of (i) low income and affordable housing advocates, (ii) state housing coalitions, or (iii) the homeless; and

(G) Four appointed by the minority leader of the Senate, at least two of whom shall be representatives of taxpayer advocacy groups or organizations.

(2) The chairpersons and ranking members of the select committee of the General Assembly having cognizance of matters relating to housing shall be members of the commission. The chairpersons and ranking members of the joint standing committee of the General Assembly having cognizance of matters relating to planning and development, and the chairpersons and ranking members of the joint standing committee of the General Assembly having cognizance of matters relating to finance, revenue and bonding or their designees, shall serve as ex-officio members. The Secretary of the Office of Policy and Management, the Commissioner of the Department of Economic and Community Development, and the Executive Director of the Connecticut Housing Finance Authority, or their designees, shall also serve as ex-officio members.

(c) All appointments to the commission shall be made no later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

(d) The chairpersons of the select committee of the General Assembly having cognizance of housing shall serve as chairpersons of the commission. Such chairpersons shall schedule the first meeting of the commission, which shall be held no later than sixty days after the effective date of this section.

(e) The administrative staff of the select committee of the General Assembly having cognizance of matters relating to housing shall serve as administrative staff of the commission.

(f) Not later than February 1, 2000, the commission shall submit a report on its findings and recommendations to the select committee of the General Assembly having cognizance of matters relating to housing, in accordance with the provisions of section 11-4a of the general statutes. The commission shall terminate on the date that it submits such report or February 1, 2000, whichever is earlier.

Approved June 29, 1999

# MEMBERSHIP LIST

Attachment 2

Sen. Eric Coleman Co-Chair	Rep. Patrick Flaherty Co-Chair	Timothy Coppage DECD
Rep. Richard Beldon Finance Committee	Rep. Jeff Davis Planning & Development	Vincent Ditchus Jr. Milford, CT
Michael Downs Northford, CT	Diane Fox Greenwich, CT	Jeff Freiser Connecticut Housing Coalition
Anne Foley OPM	Rep. Sonny Googins Ranking Member	Elaine Hammers Trumbull, CT
Sen. Thomas Herlihy Planning & Development	Timothy Hollister Shipman & Goodwin	Dennis Hrabchak Northford, CT
Robert Kantor FannieMae	Rep. Janet Lockton Planning & Development	Stephen Katz Milford, CT
Gary King CT Housing Finance Authority	Senator Martin Looney Finance Committee	Rep. Ann McDonald Finance Committee
Sen. William Nickerson Finance Committee	Robin Messier Pearson Levy & Droney	Raphael Podolsky Legal Assistance Resource Corporation
Phil Tegeler CT Civil Liberties Union	Diane Randall Part. for Strong Comm.	John W. Rowland CRT
Sen. Lee Scarpetti Ranking Member	Richard Schuster St. Luke's Lifeworks	Christopher Smith Northford, CT
Virginia Stefanko Trumbull, CT	Ronald Thomas CCM	Gregory Ugalde Burlington, CT
Roger Vann NAACP	Juna Verdu N.B. Eviction Prevention	Denise Viera Hartford, CT
Brian Miller Planner, Town of Berlin	Jane McAlevey Stamford, CT	Joan Carty Bridgeport, CT
Alma Maya Bridgeport, CT	Andrea Pereira LISC	Richard Redniss Stamford, CT
Mary Lou Strom, Enfield, CT		

### **Attachment 3**

-----BON COMMISSION ON HOUSING  
EXECUTIVE SUMMARY OF RESOLUTIONS - 1988

1. Establish the Connecticut Housing Partnership between municipalities and the state to cooperatively develop ways to create affordable housing. Provide financial and other incentives to municipalities.
2. Authorize implementation of Private Rental Investment Mortgage and Equity, PRIME, program to facilitate development of affordable housing within larger mixed income developments.
3. Implement state-as-developer pilot program.
4. Provide broad package of financial and technical assistance supports for non-profit housing development corporations.
5. Improve and expand existing state Rental Assistance Program.
6. Expand use of state tax credits to leverage private sector financial commitments to affordable housing development.
7. Increase responsibilities and authority of State Building Official to ensure the uniform interpretation of state building codes by local building officials.
8. Target state programs and develop local incentives to encourage and support the preservation of existing housing.
9. Conduct inventory of all excess federal, state and municipal lands that could be used for affordable housing.
10. Require housing authorities to report annually to local government and to send copy of reports to state Department of Housing.
11. Authorize local planning and zoning commissions to adopt inclusionary zoning programs. Not a mandate.
12. Prohibit the adoption of minimum floor area requirements for residential dwellings as part of local zoning regulations.
13. Require municipalities to treat manufactured homes the same as other forms of housing in both zoning and subdivision regulations.
14. Require each municipality exercising zoning, planning, or land use ordinance powers to zone a reasonable amount of its land...to permit multi-family housing without age-based restrictions.

BLUE RIBBON COMMISSION ON HOUSING  
EXECUTIVE SUMMARY - 1988

15. Request development of specific maximum land areas that can be specific as minimum lot size under normal conditions.
16. Amend C.G.S. 8.2 (zoning enabling statutes) to establish a standard of affordable housing in a municipality.
17. Require that part (25%-35%) of any state grant of monetary assistance, for the acquisition of land for open space be used by the recipient municipality to purchase land for affordable housing.
18. Establish a state housing appeals board through which local land use decisions can be appealed.
19. Review and propose revisions in all housing related (except CHFA) statutes and regulations.
20. Review state building costs to eliminate items which increase costs but do not necessarily improve general welfare and safety of the public.
21. Prevent the sunseting of mortgage revenue bonds proposed by federal government.
22. Prevent the sunseting of Section 8 Existing subsidies as proposed by the federal government.
23. Work with federal government and owners to develop a strategy to deal with potential prepayment of mortgages of certain federally subsidized housing projects.
24. Integrate the housing needs of persons with disabilities with the housing needs of the general population.
25. Extend, until February 1, 1989, and expand the Bloue Ribbon Commission on Housing.
26. Endorse continued study of a broad range of housing issues during that extension period.

Land Use Recommendations

1. Inland Wetlands and Watercourses - revise statutes to provide for an effective time limit for decisions on requests for inland wetlands and watercourses permits.
2. Abutters' Appeals - amend statutes to provide that persons wishing to appeal a planning and zoning commission decision approving an Affordable Housing Development must establish aggrievement in fact, regardless of their proximity to the proposed development.
3. Affordable Housing Appeals Procedure - establish a procedure whereby decisions of local land use commissions rejecting an application which would lead to the development of affordable housing can (a) be appealed in an expeditious manner, and (b) be judged as to whether the local commission properly considered the need for affordable housing in the community.
4. Land Use Education Council - establish the Land Use Education Council as a permanent body and fund an Office of Land Use Education to coordinate land use education activities in the state.
5. Inclusionary Zoning - adopt legislation establishing in general terms that municipalities have the power to adopt various "inclusionary" zoning and subdivision regulations requiring the development of housing affordable by persons of low and moderate income.
6. Special Permits - develop technical assistance package to guide municipalities in development of innovative zoning/land use techniques to facilitate development of affordable housing.
7. Minimum Lot Size - develop specific maximum land areas that can be specified as minimum lot size that under normal conditions will protect public health, taking into account various soil types and water supply patterns.
8. Conveyance Tax - institute an additional mandatory local conveyance tax of 0.34% on all real estate transactions which exceed a sales price of \$100,000. Revenues will remain with the municipality in which they are raised, for use exclusively for the development of affordable housing or for infrastructure costs directly associated with the development of new affordable housing in the town. Town must be a member of the Connecticut Housing Partnership (CHPP) program and use monies on a CHPP project. Money not used within three years reverts to the Department of Housing for affordable housing projects.

Finance and Programs Recommendations

9. Rental Assistance Program - increase appropriations for RAP and maintain broad-based RAP program not directed primarily to emergency assistance component.

10. Homelessness Prevention Loan Program - create two-year pilot program administered by Department of Human Resources to provide one-time loans of @ \$1000 per family or individual in final stage of eviction proceedings. Careful screening to select those most likely to repay loan.

11. Housing Assistance Entitlement Program - adopt policy to provide housing assistance to all whose incomes are less than 50% of area median.

12. State Moderate Rental Housing Operating Subsidies - provide on-going subsidies, where needed, to owners of housing built with state's Moderate Rental Housing program for maintenance, rehabilitation and management.

13. Public Housing State Commitment - promote development of new public housing by housing authorities using full scope of available housing finance programs.

14. Non-Profit Administrative Costs Program - fund Administrative Costs Program at \$2 million level annually.

15. Non-Profit Pre-Development Costs - reimburse non-profits, from Pre-Development Costs Program, for reasonable share of organization's project-related administrative costs.

16. Highway Transport of Mobile/Manufactured and Modular Housing - amend statutes governing transport of such units on state highways to extend time parameters and length/width allowances.

17. Connecticut Housing Trust Fund - create Connecticut Housing Trust Fund to finance affordable housing production and to provide direct assistance to low- and moderate-income homeowners and renters. Financing mechanism must be renewable and predictable revenues and interest, other than traditional General Fund appropriations and bond authorizations.

18. Re-use of Railroad Spurs - create Task Force to determine feasibility of developing surplus rail properties for mixed-use purposes, especially mixed-income housing.

BLUE RIBBON COMMISSION ON HOUSING  
EXECUTIVE SUMMARY OF RECOMMENDATIONS - 1989, Cont'd.

Finance and Programs Recommendations

19. Anti-Displacement Policy - ensure that involuntary displacement in connection with DOH- and DED-funded housing or community development be reduced to minimum level consistent with achieving objectives of program.

20. Employer-Assisted Housing - encourage development of employer-assisted housing programs.

21. Site Value Taxation - create Task Force to study feasibility of innovative site-value taxation as means of stimulating development of affordable housing.

22. PRIME Policy and Program Commitment - confirm and expand state's commitment to PRIME by ensuring capital funds and RAP subsidies to finance anticipated demand over next two years, currently estimated at 2500 units (900 for low-income households).

23. Homeownership Program - implement a single-family new construction program for households earnings up to 80% of area median income.

24. Journeymen/Apprentice Ratios - support action taken by Labor Commissioner in waiving enforcement of three-to-one ratio for journeymen-to-apprentice, and substituting one-to-one ratio. Commission recommends that a one-to-one ratio be maintained, but does not recommend new legislation.

25. Condominium Conversions - create legislation requiring local planning commission approval for condominium conversions. Factors to consider include: extent to which conversion promotes or detracts from town's duty under statutes to encourage development of housing opportunities; likely impact on town's rental market; extensiveness of tenant displacement; and extent to which tenants are likely to buy their own units.

**Comparison of HUD FMRs with 80% and 60% of the lesser of area or statewide median income**

January 26, 2000

Metro area	0 BR 1 person	1 BR 1.5 persons	2 BR 3 persons	3 BR 4.5 persons	4 BR 6 persons
State \$62,800	80% - \$879 60% - \$659	80% - \$942 60% - \$707	80% - \$1130 60% - \$848	80% - \$1306 60% - \$980	80% - \$1457 60% - \$1093
Bridgeport \$63,300	80% - \$879 60% - \$659 <b>FMR+ \$555</b> <b>FMR - \$462</b> 80% -\$324 60% -\$197	80% - \$942 <b>FMR+ \$721</b> 60% - \$707 <b>FMR - \$601</b> 80% -\$221 60% -\$106	80% - \$1130 <b>FMR+ \$869</b> 60% - \$848 <b>FMR - \$724</b> 80% -\$261 60% -\$124	80% - \$1306 <b>FMR+ \$1086</b> 60% - \$980 <b>FMR - \$905</b> 80% -\$220 60% -\$75	80% - \$1457 <b>FMR+ \$1355</b> FMR - \$1129 <b>60% - \$1093</b> 80% - \$102 60% \$0
Hartford \$59,600	80% - \$834 60% - \$626 <b>FMR+ \$526</b> <b>FMR - \$438</b> 80% -\$308 60% -\$188	80% - \$906 60% - \$680 <b>FMR+ \$654</b> <b>FMR - \$545</b> 80% -\$252 60% -\$135	80% - \$1073 <b>FMR+ \$836</b> 60% - \$805 <b>FMR - \$697</b> 80% -\$237 60% -\$108	80% - \$1240 <b>FMR+ \$1050</b> 60% - \$930 <b>FMR - \$875</b> 80% -\$190 60% -\$55	80% - \$1383 <b>FMR+ \$1274</b> FMR - \$1062 <b>60% - \$1037</b> 80% -\$109 60% \$0
Waterbury \$55,900	80% - \$783 60% - \$587 <b>FMR+ \$544</b> <b>FMR - \$453</b> 80% -\$239 60% -\$134	80% - \$839 <b>FMR+ \$734</b> 60% - \$629 <b>FMR - \$612</b> 80% -\$105 60% -\$17	80% - \$1006 <b>FMR+ \$910</b> FMR - \$758 <b>60% - \$755</b> 80% -\$96 60% \$0	80% - \$1163 <b>FMR+ \$1134</b> FMR - \$945 <b>60% - \$872</b> 80% -\$29 60% \$0	80% - \$1297 <b>FMR+ \$1271</b> FMR - \$1059 <b>60% - \$973</b> 80% -\$26 60% \$0
New London- Norwich \$52,900	80% - \$741 <b>FMR+ \$594</b> 60% - \$555 <b>FMR - \$495</b> 80% -\$147 60% -\$60	80% - \$794 <b>FMR+ \$719</b> FMR - \$599 <b>60% - \$595</b> 80% -\$75 60% \$0	80% - \$952 <b>FMR+ \$858</b> FMR - \$729 <b>60% - \$714</b> 80% -\$94 60% \$0	80% - \$1100 <b>FMR+ \$1094</b> FMR - \$912 <b>60% - \$825</b> 80% -\$6 60% \$0	FMR+ \$1250 <b>80% - \$1227</b> FMR - \$1042 <b>60% - \$920</b> 80% \$0 60% \$0
New Haven- Meriden \$58,500	80% - \$819 <b>FMR+ \$640</b> 60% - \$614 <b>FMR - \$533</b> 80% -\$179 60% -\$81	80% - \$878 <b>FMR+ \$785</b> 60% - \$658 <b>FMR - \$654</b> 80% -\$93 60% -\$4	80% - \$1053 <b>FMR+ \$971</b> FMR - \$809 <b>60% - \$790</b> 80% -\$82 60% \$0	FMR+ \$1242 <b>80% - \$1217</b> FMR - \$1035 <b>60% - \$913</b> 80% \$0 60% \$0	FMR+ \$1440 <b>80% - \$1357</b> FMR - \$1200 <b>60% - \$1018</b> 80% \$0 60% \$0
Danbury \$80,800	80% - \$879 <b>FMR+ \$749</b> 60% - \$659 <b>FMR - \$624</b> 80% -\$130 60% -\$35	80% - \$942 <b>FMR+ \$896</b> FMR - \$747 <b>60% - \$721</b> 80% -\$46 60% \$0	80% - \$1130 <b>FMR+ \$1120</b> FMR - \$933 <b>60% - \$848</b> 80% -\$10 60% \$0	FMR+ \$1477 <b>80% - \$1306</b> FMR - \$1231 <b>60% - \$980</b> 80% \$0 60% \$0	FMR+ \$1703 <b>80% - \$1457</b> FMR - \$1419 <b>60% - \$1093</b> 80% \$0 60% \$0

**Comparison of HUD FMRs with 80% and 60% of the lesser of area or statewide median income**

January 26, 2000

Metro area	0 BR 1 person	1 BR 1.5 persons	2 BR 3 persons	3 BR 4.5 persons	4 BR 6 persons
Stamford- Norwalk \$94,300	FMR+ \$959	FMR+ \$1122	FMR+ \$1369	FMR+ \$1835	FMR+ \$2027
	<b>80% - \$879</b>	<b>80% - \$942</b>	FMR - \$1141	FMR - \$1529	FMR - \$1689
	FMR - \$799	FMR - \$935	<b>80% - \$1130</b>	<b>80% - \$1306</b>	<b>80% - \$1457</b>
	<b>60% - \$659</b>	<b>60% - \$707</b>	<b>60% - \$848</b>	<b>60% - \$980</b>	<b>60% - \$1093</b>
	80% \$0	80% \$0	80% \$0	80% \$0	80% \$0
	60% \$0	60% \$0	60% \$0	60% \$0	60% \$0

Explanatory notes:

1. "FMR" means the HUD Section 8 "Fair Market Rent" for the metropolitan statistical area (MSA) which contains the town. "FMR" refers to 100% of the FMR and "FMR+" means 120% of the FMR.
2. HUD FMRs cover the entire cost of rental housing (not just contract rent) and therefore must be reduced for an allowance for heat and utilities (other than telephone and cable) if heat and utilities are not included in the contract rent.
3. The FMRs used in this chart are the HUD Section 8 FMRs as of October 1, 1999. They are updated annually.
4. The area and statewide medians are based upon HUD medians as of January 27, 1999. They are updated annually. It is expected that updated medians for 2000 will be issued soon.
5. The first four lines in each box show the current maximum permissible rents under 8-30g based upon 60% and 80% of the HUD area median for each family size (or the statewide median, if that is less).
6. The Affordability and Enforcement Subcommittee has proposed that rents in restricted units in set-aside developments not be permitted to exceed 100% of FMR for 60% units and 120% of FMR for 80% units. **Boldface type** is used in the chart to show which figure, under the Subcommittee's proposal, would constitute the maximum permissible rent. The last two lines in each box show the amount by which the maximum permissible rent under the current version of 8-30g would be reduced as a result of the Subcommittee's proposal.
7. For purposes of making these calculations, the Subcommittee has assumed that there are 1.5 persons per bedroom (except for 0-bedroom efficiencies, for which 1 person is assumed). Where a fractional number of persons applies (e.g., 4.5 persons for a 3-bedroom unit), median incomes were determined by interpolation from the nearest whole numbers of persons. The 1.5 persons per bedroom is standard, and the Subcommittee has recommended that this ratio be incorporated into DECD's regulations.

**Attachment 5**

Sample Maximum Price Calculation for Sale Unit At  
80 Percent Of Statewide Median

Sample Computations For A  
Family of Four, Based On  
1999 Data

1. Determine 1999 (or relevant year) area median income for PMSA or statewide median as published by HUD:	\$62,800
2. Calculate 80 percent of Item 1:	\$50,240
3. Calculate 30 percent of Item 2 representing the maximum portion of a family's income that may be used for housing:	\$15,072
4. Divide Item 3 by twelve (12) to determine the maximum monthly outlay:	\$1,256
5. Determine by reasonable estimate monthly expenses, including taxes, insurance, heat, and utility costs, excluding telephone and cable television and required common interest ownership fees:	\$500
6. Subtract Item 5 from Item 4 to determine the amount available for mortgage principal and interest:	\$756
7. Apply Item 6 to a reasonable mortgage term (30 years) at then prevailing interest rate (7.5 percent for this sample calculation) to determine the financeable amount:	\$108,000
8. Assume 20 percent down payment:	\$10,800
9. Add Items 7 and 8 to determine the MAXIMUM SALE PRICE:	\$118,800

Sample Maximum Price Calculation for Sale Unit At  
60 Percent Of Statewide Median

Sample Computations For A  
Family of Four, Based On  
1999 Data

10. Determine 1999 (or relevant year) area median income for PMSA or statewide median as published by HUD:	\$62,800
11. Calculate 60 percent of Item 1:	\$37,680
12. Calculate 30 percent of Item 2 representing the maximum portion of a family's income that may be used for housing:	\$11,304
13. Divide Item 3 by twelve (12) to determine the maximum monthly outlay:	\$942
14. Determine by reasonable estimate monthly expenses, including taxes, insurance, heat, and utility costs, excluding telephone and cable television and required common interest ownership fees:	\$420
15. Subtract Item 5 from Item 4 to determine the amount available for mortgage principal and interest:	\$522
16. Apply Item 6 to a reasonable mortgage term (30 years) at then prevailing interest rate (7.5 percent for this sample calculation) to determine the financeable amount:	\$74,715
17. Assume 20 percent down payment:	\$7,471
18. Add Items 7 and 8 to determine the MAXIMUM SALE PRICE:	\$82,186

## Dissenting Opinion

*The Commission agreed to attach this dissenting opinion by two of its members. The Commission did not review the opinion, and thus cannot verify its findings and recommendations.*

Dissenting Opinion

Submitted By:  
Vincent Ditchkus, Jr.  
Steven Katz

January 31, 2000

### *Affordable Housing Commission*

The Blue Ribbon Committee created to study Affordable Housing in Connecticut has recommended a policy of taking control of local land use out of the hands of duly elected officials and Connecticut voters and putting complete control of over-development and environmental destruction on a regional basis, into the hands of federal and state unelected officials, all at the guidance of special interest groups.

This committee has chosen to completely ignore letters and testimony from local officials, taxpayers and professionals regarding the devastation to open space, and ever increasing taxburden from litigation, over-development, and the need to provide more teachers and school facilities, this does not include all the social services that may have to be provided. All of which have not yielded a significant increase in funding from state or federal funding, specifically, the ECS (Educational Cost Sharing) formula, this is a direct result of CGS Sec. 8-30g. The Blue Ribbon Committee also did not recognize 30 Bills introduced during the last legislative session.

### *Changes regarding the affordable housing land use appeals*

Most changes that have been recommended, are a direct result of a recent Supreme Court decision *Christen Activities Council Congregation v Town Council of the Town of Glastonbury ET AL. [SC 15669] [Supreme] 10/28/99* [see attached decision] and are a negative reaction to this decision, the reader is encouraged to review the above decision.

### *Zoning Regulation Changes*

As a member (s) of the Zoning Regulations Sub-Committee, I/WE **DO NOT** approve of any changes to any of our current Zoning Laws including CGS Sec. 8-2, with the exception of repealing CGS Sec. 8-30g.

The committee was able to review many of the towns local zoning rules and regulations using a

variety of methods that are outlined in the Blue Ribbon Committee's report. The reader should also note of attempting to review 169 towns or cities within a 3 week period on approximately 4 separate occasions cannot produce adequate or sufficient data on affordable housing, multifamily housing, or even, mixed use regulations due to the complexity or the varying terminology throughout the State. Subcommittee review for affordable or multifamily housing, was at best limited to key words and **cannot** take into account waivers, variances that have been granted, or zone changes, cluster zoning, or subdivisions that may have been approved.

The reader should also note not listed within the Blue Ribbon Committee's report is that many towns have regulations regarding "Inlaw" apartments, mobile homes [trailers] which are currently not counted toward CGS Sec. 8-30g's 10% mandate, ***(according to testimony from current committee members who served on the original Blue Ribbon Committee CGS Sec. 8-30g's 10% affordable housing per town is not a "Mandate" or a "Goal").***

No consideration has been given to towns or the citizens of those towns as to how they feel they should grow in size, economically, and as to whether they can support the financial burden of placing in city water or sewers. All these factors take part in the way a town will grow, and at what rate.

The Subcommittee has recommended that a task force be appointed to work with the Department of Economic and Community Development (DECD) to draft a "model regulation".

***"These model regulations need not prescribe a "one size fits all" requirement for density, design, dimensional, or use requirements, but rather should advise towns in such matters as how to define key terms in affordable housing land use regulations,"***

The Subcommittee is not in full agreement and the minority does not recommend that a task force be appointed to "model regulation

CGS Sec. 8-2 currently states:

Such regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood, and other dangers, to promote health and the general welfare; to provide for adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision to transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character if the district and its peculiar suitability for particular uses and with a view to conserving the value of the buildings and encouraging the most appropriate use of land throughout such municipality.

History CGS Sec. 8-2. 1959 acts required that regulations be uniform for the use of land in district and authorized requirement of special permit.

History CGS Sec. 8-2 Requisites to establish nonconforming use. 145 C.682 . ***[Main principle and dominate use of a building determines character.146 C.70. Change of Zone increased rather than lessened congestion in streets; action of commission held illegal. 146 C.321. Maximum possible enrichment of developers is not controlling purpose of zoning.]***

History CGS Sec. 8-2 *An essential purpose of zoning is to stabilize use of property.*

CGS Sec. 8-30g is such a nonconforming use, a law designed for “*Maximum possible enrichment of developers*”

Under CGS Sec. 8-30g a Developer [s] will have built over 11,281 units of housing, of which 25% were affordable, 75% [8460 units] were not, clearly for the “*Maximum possible enrichment of developers*” and does not provide for a municipality to “prevent” overcrowding of land.

CGS Sec. 8-30g would continue to be in affect, due to the 10% mandate that could never be reached, asuming all building in the town/city were cease.

If CGS Sec. 8-30g were to be changed to 30% affordable and 70% non affordable, the developer would still have over-build 6,241 units[based upon the above 20,000 units of housing].

CGS Sec. 8-2, provides for a municipality to “prevent” overcrowding of land. Not stated in the Blue Ribbon Committees report, is that towns throughout Connecticut have a variety of regulations regarding minimum lot sizes which vary from town to town. Research from the subcommittee would suggest that these towns have followed legislative direction.

CGS Sec. 8-2 also states:

shall encourage the development of housing opportunities, including opportunities for multi-family dwellings, consistent with soil types, terrain and infrastructure capacity, for all residences of the municipality and the planning region in which the municipality is located.

This section of CGS Sec. 8-2 was added as part of P.A. 91-392, nearly two years after CGS Sec. 8-30g, P.A. 88-230 which encourages developers to, overcrowd land with high density projects, and does not avoid undue concentrations of populations.

CGS Sec. 8-2 was not designed as a one size fits all, or “General Zoning” throughout the state, once a project has been deemed “affordable”, then this becomes “General Zoning”, any residential zone becomes a “affordable zone” not subject to current zoning regulations regarding density, design, dimensional, or use requirements.

Christen Activities Council Congregation v Town Council of the Town of Glastonbury ET AL.  
[SC 15669] [Supreme] 10/28/99 p. 28,

*The Senate legislative history is to the same affect. See, e.g., 32 S. Proc., Pt. 12, 1989 Sess., p. 4048, remarks of Senator Richard Blumenthal, the floor sponsor of the bill (“[this bill] sets a standard of the review that places a reasonable burden on that land use agency to justify on the record and from it’s own record why an adverse decision is made with respect to a specific project... and do[es] not provide for any kind of general zoning override”).”*

This commission also had the opportunity to view two affordable housing projects, this was to justify the use of CGS Sec. 8-30g and pursued committee members of it’s beneficial “need”. This was one of the few times that the commission dealt with CGS Sec. 8-30g, without having to discuss the law itself. Discussion regarding the law was “limited” to the court case of the projects.

The first was in West Hartford, CT consisting of 10 units on approximately 2 ± acres or 1 unit per 8700 ± of land. The property which is “mutually” share by the tenants in a form similar to a co-op. The buildings located on the property are similar to that of large duplexes, the land is mutually shared only in the respect that children are only allow to use a 15’x15’ square pen, the rest of the property is off limits to all residents and children, only the landscapers are allow on the grass.

The second housing project was in Avon, CT, this apartment complex consisted of 45 apartments on approximately 12 acres, roughly 1 unit per 11,616 ± square feet all of which area deemed affordable. Buildings and parking are spaciouly spread out on this 12 acre parcel.

This cannot be compared to 20 units on 1.25 acres, roughly 1 unit per 2,700 ± square feet of which, only 25% (4 units) are affordable, two large buildings with 10 units each and nearly evry square foot paved with asphalt, or 65 units on 7.5 ± acres, roughly 1 unit per 5000 square feet, only 16 units (25%) would be deemed affordable, nearly half of the property is wetlands and unusable.

What has happened with the previous sites that had been visited and the cases that are being brought before Planning and Zoning commissions are not comparable. Developers are now using the CGS Sec. 8-30g as a “Zone Buster”, a “One Size Fits All”, or “General Zoning”, placing as many units on the parcel as possible, and in one case withdrawing the plans (not filed under CGS Sec. 8-30g) moments before the public hearing due to public opposition, then refile the plans increasing the number of units to be built from 204 to 245.

All, recommendations for **“PROMOTING HOUSING OPPORTUNITIES THOUGH ZONING”** refer to the increase in multifamily zoning, and the construction of multifamily dwellings, the emphasis being on multifamily, the only people that will benefit from the construction of projects such as these are the developers. No emphasis has been placed on homeownership in the suburbs or in rural areas, all recommendations are based upon multifamily dwellings being built under CGS Sec. 8-30g, continually increasing government control over a towns housing stock and a indirect unfounded mandate..

Sections 1a and 1b both deal with affordable housing administration and enforcement, this is another, unfunded mandate.

## ***Definition changes and Clarifications***

***Section 5 Clarify the housing need that must be addressed under CGS Sec. 8-30g is a regional need, not a local or statewide need.***

This was not the original intent of CGS Sec. 8-30g

Christen Activities Council Congregation v Town Council of the Town of Glastonbury ET AL.  
[SC 15669] [Supreme] 10/28/99 p. 15

***Representative William H Nickerson inquired of Representative William Cipes, one of the proponents of the bill, regarding the effect of the elimination. Representative Cipes responded: “[T]he intent is to make very clear that it is the municipality’s responsibility to care for the housing needs of its citizens and not some broader community.” Representative Nickerson then responded to Representative Cipes: “Thank you. So that the effect of the amendment would read the same if it were to say, though it doesn’t say, ‘in the town in question’ that would put the same meaning in the amendment as does the amendment before us without those words. Is that correct...?” Representative Cipes responded: I think that is generally the intent.” 32 H.R. Proc., supra, pp. 10, 622-23.***

This legislature history compels the need for such housing in the local community, as opposed to a regional or statewide basis.

By regionalizing the “need” then by changing this we are in fact saying that if the “region” has meet its 10% quota, then each individual town under that region would qualify for exemption.

Currently, the State of Connecticut has approximately 11% of housing that qualifies as “affordable” under CGS Sec. 8-30g, again, this does not include rental units held in the private sector, or homes that have been purchased including VA mortgages, mortgages that were made available and affordable to veterans.

## ***Procedural Changes***

Section 4 When deciding an appeal under CGS Sec. 8-30g, the court must determine, as a matter of law, whether the commission has met the last three elements of CGS Sec. 8-30g(c)(1) regarding the burden of proof. Again, as stated in the above Supreme Court decision, the court has ruled upon evidence and this is a reactive statement to that decision.

## ***Moratoria***

The Moratoria proposal to change the provisions to CGS Sec. 8-30g providing a moratoria on the affordable housing appeals, includes a point system, this point system is still based upon the 10% mandate, a town is still caught in an endless cycle of attempting to reach 10%, as the housing stock continually increases so does the 10%.

Example: Town xyz has 20,000 housing units, Town xyz must have 10% “affordable” equivalent to 2,000 units. Developer abc come to Town xyz and states that he will build the 2,000 units but under the law CGS Sec. 8-30g the Developer is allowed to build 8,000 units as long as 25% are deemed “affordable” as stated under the law. Town xyz is happy that it has received its 3 year moratoria, and will be exempt from Developers from using CGS Sec. 8-30g again, that is, until the next U.S. Census when Town xyz now has an additional 8,000 units of housing bringing its total to 28,000 housing units and 10% of 28,000, is 2,800 units, 800 units more than when the process originally started.

### ***Procedural Changes Not Recommended by the Blue Ribbon Committee***

Proponents of CGS Sec. 8-30g have used statistics based upon a statewide “need” for affordable housing, through this assumption, one possible solution that has not been addressed is to allow CGS Sec. 8-30g to be used in each town only **once** until developer [s] have used CGS Sec. 8-30g in each town throughout the state before it can be used again in the first town, combined with allowing developers to “reuse” CGS Sec. 8-30g as it is currently written in towns that are at the lowest percentage of affordable housing bringing them up to the next lowest, and gradually stepping to the next lowest.

This would prevent developers from targeting or steering their high density project to towns that have “easy” access to interstate’s or railways, and evenly spreading the “need”.

### ***Procedural Changes Not Recommended by the Blue Ribbon Committee***

Change CGS Sec. 8-30g to read **UPON APPEAL BY DEVELOPER, THE DEVELOPER SHALL BE RESPONSIBLE FOR ALL LEGAL COSTS INCURRED BY A MUNICIPALITY IF THE COURT AFFIRMS THE DECISION IN PART OR WHOLE OF THE ZONING COMMISSION.**

### ***Housing Programs***

Currently this portion of the recommendations will use approximately 116.6 million dollars of taxpayers money.

### ***Section 2a Affirmatively further racial and economic integration, including expanding multi-family rental housing opportunities in suburban and rural communities.***

Based upon this statement, I am led to believe that CGS Sec. 8-30g has become an affirmative action plan for housing, is it? Is this commission attempting to force people to move to areas that they may not want to move, shifting people from one high density rental project to another, creating pocket areas of high density? Without offering them homeownership in the suburbs?

The use of CGS Sec. 8-30g to expand multi-family rental units just in the suburbs goes against CGS Sec. 8-2, insofar as the developers are proposing and building high density projects at a rate of 75% more than the affordable units in an attempt to justify the towns need for affordable housing. Only towns that fall below 10% are subject to this law.

No funding should be expended toward “non-profit” organizations until a complete and thorough investigation of the leadership, qualifications, past performance history, and salaries, are evaluated. The money has to be accounted for, a “non-profit” organization that accepts public funds must be held accountable to the public, including allowing the public to review their books and expenditures freely.

We must first take control and account for the fund that has been wasted and demand that our investment be returned in full.

### ***Close the gap between Income, Rent, and Homeownership***

Section 3 ***The state should reduce reliance on housing assistance by adopting policies that assure that people have adequate incomes.***

Not only should the state but cities must make the initiative to attract quality jobs and businesses. Ones at which entry level employees have the opportunity to advance their skills and economic standing.

Full time under paid low wage workers, should first be addressed in the manner of, what are their skills and qualifications, and this statement suggesting that we increase the minimum wage? Minimum wage was not meant to be a living wage.

New Haven Register 01/27/00, City’s business barriers studied,

***“To lure new businesses to the inner city, New Haven needs to overcome obstacles like high taxes, building sites, an undereducated labor pool and crime - real or perceived”***

***“Improving the workforce- The study found employers are frustrated with the skill levels of job applicants About 40 percent of the study area’s work force over the age of 25 lacked a high school diploma, according to the 1990 census figures.”***

It is the intent of the CGS Sec. 8-30g written or implied to shift multi-family housing projects from the city’s to the suburbs, in doing so the committee has neglected to correct the above mentioned concerns. I addressed, would greatly benefit the city’s and move families out of low-paying jobs and into higher skilled levels, removing the need for affordable housing.

### ***Assure Ongoing Analysis of Housing Needs and Create an Ongoing Participatory Planning Process***

#### ***Section-8 Certificates***

This along Towns have been mandated through CGS Sec. 8-30g to have 10% of their housing stock “affordable”, this does not include housing that is in the private sector renting or selling at or in most cases below what is deemed “affordable”, and in many cases below what section-8

vouchers [voucher and certificate will be used interchangeably throughout and are basically the same, the difference being, a voucher is portable a certificate is not] are paying.

It should also be question that the largest burden that elderly who own their home will most likely be taxes, as previously mentioned, their are approximately 116.6 million dollars in new funding/appropriation in this proposal.

The needs sub-committee has failed to prove the need, questions that have been raised and not answered, waiting lists for Section-8 vouchers or certificates [these same questions are the same for state rental assistance programs], are long or even closed at some housing authorities, why? This commission has not provided any data as to the number of people who are currently on the lists, how many lists is that individual on 2,3,4 etc.?, a practice that is encouraged by HUD [see attached]. How many members of the same family are on the same list [s] waiting for the same voucher? How many illegal immigrants are on waiting lists or have received certificates? How many affordable units have torn down in the State of Connecticut, including those that have destroyed or vandalized by tenants, or those that have fallen into total disrepair due to neglect by the owner, specifically HUD. How many section-8 certificates have been issued to an individual, only to have that individual have a able bodied “companion” who is earning income move in that is not listed on the section-8 certificate application, if such information was listed, it would place the applicant out of range of receiving the certificate. Section-8 coordinators are unable to remove such individuals due to the fact that they must give 24 hours notice prior to an inspection. Since section-8 vouchers are counted toward this 10% mandate, then the reader should be aware that when a voucher has “ported-in” to a town that there is no way or safe guard in place to credit the receiving town. Only “port-out” vouchers will be listed and counted, these are ones that have been directly allocated to a specific town. All these factors taken into account would directly reduce the waiting lists require vouchers.

### ***Statewide Data Base***

No consideration has been given to starting a statewide data base of recipients of either state or federal subsidizes, of whom have destroyed or vandalized in any way, public or none public housing. Tenants in receipt of section-8 vouchers who vandalize or destroy the apartment are not held accountable, acceptance of a voucher is based upon the publics trust that our taxdollars will not be abused. Vandalizing private property with a public subsidy has broken that trust with the public. The only person that the landlord can file legal action against is the tenant, not HUD, the provider of the certificate, who qualifies the tenant for the certificate.

HUD must start to accept responsibility for tenants actions, sharing costs and the burden for evicting bad and non paying tenants.

The lose of will landlords to the section-8 program after the change in participation rules that “if you had one section-8 certificate in your building you had accept all” was changed to that you did not have to accept them all. Why did landlords start to “cutback” on the number of certificate that they accepted?

Until landlords receive respect from both tenants and HUD and knowing that their investment

will be protected, reluctance to the section-8 program will always be there, this is not to be mistaken or construed as discrimination.

### *Homeless*

The statistics concerning homeless are astounding, and attempting to make heads or tails with the limited information would be foolish, using the information given, 15,917 different people used the emergency shelters if we were now to remove the 2,800 children under the age of 18 that would leave approximately 13,200 people, with that nearly, 50% or 6,100 are drug addicts. This is a choice, or lifestyle for many people.

To drag into the equation people who have doubled up with family or friends is an insult, to those who have chosen for one reason or another to share expenses, and not simply “because they cannot afford”.

Not taken into account, for homeless are those who choose to be homeless, in December 1999 prior to Christmas, the New Haven Register ran an article regarding a homeless man, in this article the man stated that “I don’t call myself homeless” said Beijing. “I am at home wherever I go, I’d love to have a house and family someday though.” New Haven Register 12/201999, There’s little help available to the homeless in Suburbia.

This gentleman has been homeless since the late 1980’s at his choice, in perspective he has been rent free, able to work, even if it were at minimum wage, for over ten years this gentleman would have been able to work 40 hours per week at \$5.75 per hour \$230.00 per week, \$11,960.00 per year, for approximately 10 years equivalent to saving \$119,600.00 could have been saved

Respectfully Submitted  
Vincent Ditchkus, Jr.  
Steven Katz

## Dissenting Opinion Attachment 1

This information can be found on the internet at  
<http://www.hud.gov/local/har/harpubhs.html>



## Local Public Housing Authorities

If you want to apply for **public housing** or Section 8 **certificates or vouchers**, you must go to a housing authority. Because some housing authorities have long waiting lists, you may want to apply at more than one. See our list of **housing authorities**.

**Questions and Comments**

Back to the **Connecticut Page**

## Dissenting Opinion Attachment 2

CHRISTIAN ACTIVITIES COUNCIL,  
CONGREGATIONAL v. TOWN  
COUNCIL OF THE TOWN OF  
GLASTONBURY ET AL.  
(SC 15669)

Callahan, C. J., and Borden, Berdon, Norcott, Katz, Palmer and McDonald, Js.<sup>1</sup>

{OPINION}

BORDEN, J. The principal issue in this appeal involves the scope of judicial review in an affordable housing land use appeal pursuant to General Statutes § 8-30g.<sup>2</sup> The plaintiff, Christian Activities Council, Congregational, appeals<sup>3</sup> from the judgment of the trial court. By that judgment, the trial court dismissed the plaintiff's appeal from the action of the named defendant, the town council of the town of Glastonbury (defendant),<sup>4</sup> which had denied the plaintiff's application for a change of zone for the

<sup>1</sup>This appeal originally was argued before a five member panel of this court consisting of Chief Justice Callahan and Justices Borden, Berdon, Norcott and Katz. Subsequently, the court decided to consider the case en banc, and Justices Palmer and McDonald were added to the panel.

<sup>2</sup>General Statutes § 8-30g provides: "(a) As used in this section: (1) 'Affordable housing development' means a proposed housing development (A) which is assisted housing or (B) in which not less than twenty-five per cent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that such dwelling units be sold or rented at, or below, prices which will preserve the units as affordable housing, as defined in section 8-39a, for persons and families whose income is less than or equal to eighty per cent of the area median income or eighty per cent of the state median income, whichever is less, for at least thirty years after the initial occupation of the proposed development; (2) 'affordable housing application' means any application made to a commission in connection with an affordable housing development by a person who proposes to develop such affordable housing; (3) 'assisted housing' means housing which is receiving, or will receive, financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing, and any housing occupied by persons receiving rental assistance under chapter 319uu or Section 1437f of Title 42 of the United States Code; (4) 'commission' means a zoning commission, planning commission, planning and zoning commission, zoning board of appeals or municipal agency exercising zoning or planning authority; and (5) 'municipality' means any town, city or borough, whether consolidated or unconsolidated.

"(b) Any person whose affordable housing application is denied or is approved with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units, specified in subparagraph (B) of subdivision (1) of subsection (a) of this section, contained in the affordable housing development, may appeal such decision pursuant to the procedures of this section. Such appeal shall be filed within the time period for filing appeals as set forth in sections 8-8, 8-9, 8-28, 8-30, or 8-30a, as applicable, and shall be made returnable to the superior court for the judicial district where the real property which is the subject of the application is located. Affordable housing appeals shall be heard by a judge assigned by the Chief Court Administrator to hear such appeals. To the extent practicable, efforts shall be made to assign such cases to a small number of judges so that a consistent body of expertise can be developed. Appeals taken pursuant to this subsection shall be privileged cases to be heard by the court as soon after the return day as is practicable. Except as otherwise provided in this section, appeals involving an affordable housing application shall proceed in conformance with the provisions of said sections 8-8, 8-9, 8-28, 8-30, or 8-30a, as applicable.

"(c) Upon an appeal taken under subsection (b) of this section, the burden shall be on the commission to prove, based upon the evidence in the record compiled before such commission that (1) (A) the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record; (B) the decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider; (C) such public interests clearly outweigh the need for affordable housing; and (D) such public interests cannot be protected by reasonable changes to the affordable housing development or (2) (A) the application which was the subject of the decision from which such appeal was taken would locate affordable housing in an area which is zoned for industrial use and which does not permit residential uses and (B) the development is not assisted housing, as defined in subsection (a) of this section. If the commission does not satisfy its burden of proof under this subsection, the court shall wholly or partly revise, modify, remand or reverse the decision from which the appeal was taken in a manner consistent with the evidence in the record before it.

"(d) Following a decision by a commission to reject an affordable housing application or to approve an application with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units, the applicant may, within the period for filing an appeal of such decision, submit to the commission a proposed modification of its proposal responding to some or all of the objections or restrictions articulated by the commission, which shall be treated as an amendment to the original proposal. The filing of such a proposed modification shall stay the period for filing an appeal from the decision of the commission on the original application. The commission may hold a public hearing and shall render a decision on the proposed modification within forty-five days of the receipt of such proposed modification. The commission shall issue notice of its decision as provided by law. Failure of the commission to render a decision within said forty-five days shall constitute a rejection of the proposed modification. Within the time period for filing an appeal on the proposed modification as set forth in sections 8-8, 8-9, 8-28, 8-30, or 8-30a, as applicable, the applicant may appeal the commission's decision on the original application and the proposed modification in the manner set forth in this section. Nothing in this subsection shall be construed to limit the right of an applicant to appeal the original decision of the commission in the manner set forth in this section without submitting a proposed modification or to limit the issues which may be raised in any appeal under this section.

"(e) Nothing in this section shall be deemed to preclude any right of appeal under the provisions of sections 8-8, 8-9, 8-28, 8-30, or 8-30a.

"(f) Notwithstanding the provisions of subsections (a) to (e), inclusive, of this section, the affordable housing appeals procedure established under this section shall not be available if the real property which is the subject of the application is located in a municipality in which at least ten per cent of all dwelling units in the municipality are (1) assisted housing or (2) currently financed by Connecticut Housing Finance Authority mortgages or (3) subject to deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as affordable housing, as defined in section 8-39a, for persons and families whose income is less than or equal to eighty per cent of the area median income. The Commissioner of Economic and Community Development shall, pursuant to regulations adopted under the provisions of chapter 54, promulgate a list of municipalities which satisfy the criteria contained in this subsection and shall update such list not less than annually.

"(g) Notwithstanding the provisions of subsections (a) to (e), inclusive, of this section, the affordable housing appeals procedure shall not be applicable to an affordable housing application filed with a commission during the one-year period after a certification of affordable housing project completion issued by the Commissioner of Economic and Community Development is published in the Connecticut Law Journal. The Commissioner of Economic and Community Development shall issue a certification of affordable housing project completion for the purposes of this subsection upon finding that (1) the municipality has completed an initial eligible housing development or developments pursuant to section 8-336f or sections 8-386 and 8-387 which create affordable dwelling units equal to at least one per cent of all dwelling units in the municipality and (2) the municipality is actively involved in the Connecticut housing partnership program or the regional fair housing compact pilot program under said sections. The affordable housing appeals procedure shall be applicable to affordable housing applications filed with a commission after such one-year period, except as otherwise provided in subsection (f) of this section."

Although the legislature has amended § 8-30g several times since 1994, the date that the defendant denied the plaintiff's application for the zone change, the amendments are not relevant to this appeal. Hereafter, unless otherwise indicated, all references to § 8-30g are to the current revision of that statute.

<sup>3</sup>The plaintiff appealed from the judgment of the trial court to the Appellate Court, following certification to appeal by that court, and we transferred the appeal to this court pursuant to Practice Book § 65-1 and General Statutes § 51-199 (c).

<sup>4</sup>The other defendant in this appeal is Land Heritage Coalition of Glastonbury (Land Heritage), which had intervened in the zoning proceedings at issue pursuant to General Statutes § 22a-19. Under § 22a-19 (a), a legal entity may intervene in an "administrative . . . or other proceeding" by asserting in a verified petition that the proceeding "involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air,

purpose of developing a parcel of land in Glastonbury as an affordable housing development. The plaintiff claims that: (1) the trial court applied an improper scope of review under § 8-30g (c) (1) (B), (C) and (D); (2) the trial court improperly failed to consider whether all four of the criteria established by § 8-30g (c) (1) had been met; (3) the trial court improperly failed to consider all of the defendant's reasons for denying the plaintiff's application; and (4) the defendant did not meet its burdens of proof under § 8-30g (c) (1). We affirm the judgment of the trial court.

Certain facts and the procedural history are undisputed. The parcel of land in question consists of 33.42 acres located on the northerly side of Hebron Avenue and the westerly side of Keeney Street in Glastonbury. The land currently is owned by the Metropolitan District Commission (Metropolitan), a public water company, from whom the plaintiff has contracted to purchase it conditioned upon, among other things, the ability of the plaintiff to secure zoning approval from the town for construction of at least twenty-six single family affordable dwellings on the parcel. Metropolitan also owns a tract of approximately 546 acres located directly across Keeney Street, and stretching to the north, from the parcel in question. The parcel at issue in this case, along with the rest of Metropolitan's property, is currently zoned "reserved land" on the Glastonbury zoning map, a classification that places lands owned by, inter alia, public service water companies "in a special zone to ensure the proper, orderly and planned growth of such land in accordance with surrounding development and the Glastonbury Plan of Development." Glastonbury Zoning Regs., § 4.10.1. No residential development is permitted in a "reserved land" zone. That classification permits residential development at a density of one unit per acre. On the town's plan of development, however, the parcel is designated as "fringe suburban." That designation identifies land as suitable for residential development at a density of one dwelling unit per acre. The parcel sought to be developed is bordered on the east by Keeney Street, and on the south, west and north by other parcels that are zoned as "rural residence."

Under the Glastonbury charter, the defendant has the power to rezone property. Accordingly, pursuant to § 8-30g, the plaintiff filed an affordable housing development application with the defendant to rezone the parcel from "reserved land" to "rural residence." The proposed development was to be comprised of detached affordable housing to be offered to low and moderate income minority families. In connection with the application, the plaintiff submitted a preliminary subdivision plan for an open space subdivision of twenty-eight units, along with house plans illustrative of the type of housing to be constructed. The subdivision plan showed the parcel to be divided into twenty-eight lots averaging one-half acre in size, bisected by approximately thirteen acres of open space encompassing a six acre inland wetlands area. This preliminary subdivision plan contained two access roads to be constructed: one leading from Hebron Avenue, serving the eleven lots south of the open space; and the other leading from Keeney Street, serving fourteen of the lots north of the open space. The three remaining lots, north of the open space, would have direct access to Keeney Street.

The defendant referred the plaintiff's application to the Glastonbury plan and zoning commission (plan and zoning commission) for a recommendation, as required by the zoning regulations. After a public hearing, the plan and zoning commission recommended that the application be granted. In doing so, however, the plan and zoning commission made certain comments regarding the parcel. The Glastonbury conservation commission (conservation commission) also considered the plaintiff's application and, although not formally making a recommendation on the proposal, submitted to the plan and zoning commission a resolution expressing a number of "concern[s]" regarding the proposal "for inclusion into the [plan and zoning commission] public hearing record on this matter." We discuss later in this opinion the relevant comments of the plan and zoning commission and the relevant expressed concerns of the conservation commission.

The defendant, after a public hearing in June, July and August, 1994, denied the plaintiff's application. In doing so, the defendant gave the following reasons that are pertinent to this appeal: "1. The proposed development would create a new road exiting onto an already acknowledged dangerous curve on Hebron Avenue just west of its intersection with Keeney Street in an area of high risk, serious traffic accidents and high volume. The proposed development would increase existing traffic hazards and would expose residents of the proposed development and others who travel in that intersection to unreasonable risks. 2. It is in the best interest of the Town to provide open space in order to meet local and regional needs. Further, the 1994 Plan of Development recommends that [Metropolitan] lands in the Keeney Street area be considered for Town purchase and preservation as open space. . . .<sup>5</sup> 4. The proposed development could endanger a potential future water supply source as identified by Environmental Planning Services Report dated April 17, 1991 prepared for [Metropolitan] at Page 9. 5. These considerations outweigh the need for affordable housing at this site, especially because of the availability of other parcels in town suitable for affordable housing."<sup>6</sup>

The plaintiff appealed to the trial court pursuant to § 8-30g (c). The trial court, relying on our statement that, in an affordable housing land use appeal, as in a traditional zoning appeal, "[t]he zone change must be sustained if even one of the stated reasons is sufficient to support it"; (internal quotation marks omitted) *West Hartford Interfaith Coalition, Inc. v. Town Council*, 228 Conn. 498, 513, 636 A.2d 1342 (1994); concluded that there was sufficient evidence in the record to support the defendant's fourth stated reason, namely, that the proposed development may destroy a potential future source of public water. Accordingly, the trial court discussed the evidence in the record only with regard to that stated reason, and did not discuss the evidence underlying any of the other stated reasons. The court also determined that the defendant's decision otherwise complied with § 8-30g (c). It, therefore, dismissed the plaintiff's appeal. This appeal followed.

## I A

We begin by outlining the differences that we have identified thus far between an affordable housing land use appeal pursuant to § 8-30g, and a traditional zoning appeal.<sup>7</sup> First, an appeal under § 8-30g (b) may be filed only by an applicant for an affordable housing development whose application was "denied or [was] approved with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units . . . ." Thus, where the town has granted such an application, either outright or without imposing such restrictions, there is no appeal under § 8-30g (b).<sup>8</sup>

Second, the scope of judicial review under § 8-30g (c) requires the town, not the applicant, to marshal the evidence supporting its decision and to persuade the court that there is sufficient evidence in the record to support the town's decision and the reasons given for that decision. By contrast, in a traditional zoning appeal, the scope of review requires the appealing aggrieved party to marshal the evidence in the record, and to establish that the decision was not reasonably supported by the record. *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission*, 220 Conn. 527, 542-43, 600 A.2d 757 (1991).<sup>9</sup>

Third, if a town denies an affordable housing land use application, it must state its reasons on the record, and that statement must take the form of "a formal, official, collective statement of reasons for its actions." *Id.*, 544.<sup>10</sup> By contrast, in a traditional zoning appeal, if a zoning agency has failed to give such reasons, the court is obligated "to search the entire record to find a basis for the [agency's] decision." (Internal quotation marks omitted.) *Id.*

We reach this conclusion based on the text and the purpose of the statute.<sup>11</sup> The text requires that the town establish that sufficient record evidence supports "the decision from which such appeal is taken and the reasons cited for such decision . . . ." (Emphasis added.) General Statutes § 8-30g (c) (1) (A). Thus, textually the statute contemplates "reasons" that are "cited" by the town. This strongly suggests that such reasons be cited by the zoning agency at the time it took its formal vote on the application, rather than reasons that later might be culled from the record, which would include, as in a traditional zoning appeal, the record of the entire span of hearings that preceded the

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water or other natural resources of the state." Although there were several individual defendants who also had intervened pursuant to § 22a-19, they are no longer parties to this appeal. Hereafter, we refer to the Glastonbury town council as the defendant because the zoning action of that body is the basis of the plaintiff's appeal, and the arguments of Land Heritage largely parallel those of the town council.

<sup>5</sup>As its third reason, the defendant stated: "3. [Metropolitan] holds the subject property in public trust and development should only be considered upon the completion of a comprehensive plan for all [Metropolitan] holdings in the Keeney Street area." Although the defendant offered this reason in the trial court, it does not do so in this court. We therefore disregard it.

<sup>6</sup>The defendant also offered a sixth reason as follows: "6. In addition to the specifically stated reasons the members voting in favor of this motion to deny the application also incorporate their individual stated reasons as already set out in the record." The trial court ruled that the reasons given by the individual members were not entitled to consideration, and the defendant does not defend them in this appeal. Accordingly, we do not consider the sixth reason for the defendant's decision.

<sup>7</sup>We emphasize that these are the differences between the two forms of zoning appeals that we have identified thus far. Future cases may disclose other differences. We leave those determinations, however, to those cases in which the record makes it appropriate to address them.

<sup>8</sup>This does not mean, however, that the provisions of § 8-30g preclude a traditional zoning appeal by a different aggrieved person. Subsection (e) of § 8-30g specifically provides that "[n]othing in this section shall be deemed to preclude any right of appeal under the provisions of sections 8-8, 8-9, 8-28, 8-30, or 8-30a." It does mean, however, that it is only when an unsuccessful applicant appeals under § 8-30g (b) that the appeal triggers the special provisions regarding the scope of judicial review provided by § 8-30g (c).

<sup>9</sup>We discuss in more detail in part I B of this opinion the nature of a town's appellate burden in affordable housing land use appeals.

<sup>10</sup>In *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, 228 Conn. 516 n.18, we did not reach the question of "whether the statute requires the [town] to [state its reasons]." We now decide that question because, although it is not absolutely necessary to do so on the facts before us, since the defendant did state its reasons in a formal, official and collective manner, we believe that both affordable housing applicants and towns should have the guidance that the answer to this question provides.

<sup>11</sup>Our search of the legislative history has not disclosed any evidence of legislative intent bearing intelligibly on this question.

vote. Furthermore, the statute requires that the town establish that its "decision [was] necessary to protect substantial public interests in health, safety, or other matters which the [agency] may legally consider"; General Statutes § 8-30g (c) (1) (B); those "interests clearly outweigh the need for affordable housing"; General Statutes § 8-30g (c) (1) (C); and those "public interests cannot be protected by reasonable changes" to the plan. General Statutes § 8-30g (c) (1) (D). These requirements strongly suggest that the town be obligated, when it renders its decision, to identify those specific public interests that it seeks to protect by that decision, so that the court in reviewing that decision will have a clear basis on which to do so. Furthermore, "the key purpose of § 8-30g is to encourage and facilitate the much needed development of affordable housing throughout the state." *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, 228 Conn. 511. Requiring the town to state its reasons on the record when it denies an affordable housing land use application will further that purpose because it will help guard against possibly pretextual denials of such applications. We therefore read the statute, consistent with its text and purpose, to require the town to do so.

## B

We first consider the scope of our review of the defendant's decision.<sup>12</sup> The plaintiff claims that, although § 8-30g (c) (1) (A)<sup>13</sup> requires only that the defendant prove that its decision and the reasons for it be supported by "sufficient evidence in the record," the defendant has a higher burden under § 8-30g (c) (1) (B) and (C).<sup>14</sup> More specifically, the plaintiff argues that the defendant's burden under subparagraphs (B) and (C) is a preponderance of the evidence standard. With respect to subparagraph (D) of § 8-30g (c) (1),<sup>15</sup> however, the plaintiff contends that "the remarkable aspect of this requirement arises not so much from the level of the burden of proof as from where that burden falls. . . . The requirement that a commission prove that the public interests *cannot* be protected means that it must take an active role. The commission must become familiar enough with the application to make a good faith attempt to devise reasonable changes to the development to protect the public interests that it perceives to be threatened." (Emphasis in original.)

We disagree with the plaintiff's contentions regarding subparagraphs (B), (C) and (D) of § 8-30g (c) (1). We conclude that the defendant's burden under those subparagraphs is the same as that under subparagraph (A), namely, to establish that its decision and the reasons cited in support of that decision are supported by sufficient evidence in the record. With respect to subparagraph (D) more specifically, however, we conclude that where the zoning commission establishes that there is sufficient evidence in the record to support its determination that there is a substantial public interest that would be harmed by the proposed affordable housing development, and where that interest and harm are site specific, in the sense that *no* changes to the proposed development reasonably can be determined to protect that interest on that specific site, the zoning commission has satisfied its burden. Because we conclude, moreover, that in the present case the defendant has satisfied its burden under subparagraph (D), we need not decide whether, and to what extent, it had an obligation to devise potential changes to the proposed development, rather than to deny the application.

It is useful to begin this analysis by differentiating between two different, but related concepts: (1) a burden of persuasion; and (2) the scope of judicial review of an administrative decision, including a zoning decision. The concept of a burden of persuasion ordinarily applies to questions of fact, and ordinarily is expressed in one of three ways: (1) a preponderance of the evidence; (2) clear and convincing evidence; or (3) proof beyond a reasonable doubt. See C. Tait & J. LaPlante, *Connecticut Evidence* (2d Ed. 1988) §§ 4.4.1, 4.4.2, pp. 72–76. The function of the burden of persuasion is to allocate the risk of error on certain factual determinations, and to indicate the relative social importance of the factual determination at issue. *Miller v. Commissioner of Correction*, 242 Conn. 745, 791–94, 700 A.2d 1108 (1997). In a zoning case, the fact finder ordinarily is the zoning agency, not the court.

The concept of the scope of judicial review of an administrative decision, by contrast, applies to both the factual and legal decisions made by the administrative agency in question, including a zoning agency, and ordinarily differs depending on whether the court is reviewing a factual or legal determination by the agency. See, e.g., *Connecticut Resources Recovery Authority v. Zoning Board of Appeals*, 225 Conn. 731, 744, 626 A.2d 705 (1993) ("trial court must uphold the board's decision [regarding factual determinations] if it is reasonably supported by the record"); *North Haven v. Planning & Zoning Commission*, 220 Conn. 556, 561, 600 A.2d 1004 (1991) (applying plenary review to question of law). The function of the scope of judicial review is to express the policy choice, ordinarily drawn from the governing statutes, regarding the allocation of decision-making authority as between the administrative agency and the reviewing courts, and, more specifically, to articulate the degree of constraint that the statutes place upon the courts in reviewing the administrative decision in question. Where the administrative agency has made a factual determination, the scope of review ordinarily is expressed in such terms as substantial evidence or sufficient evidence. See, e.g., *Property Group, Inc. v. Planning & Zoning Commission*, 226 Conn. 684, 692, 628 A.2d 1277 (1993) (agreeing that lack of "substantial evidence" in record warranted Appellate Court's determination); see also General Statutes § 4-183 (j).<sup>16</sup> Where, however, the administrative agency has made a legal determination, the scope of review ordinarily is plenary. See, e.g., *North Haven v. Planning & Zoning Commission*, supra, 561.

In the present case, the scope of review, not the burden of persuasion, is at issue. Although § 8-30g (c) uses language slightly suggestive of fact-finding,<sup>17</sup> albeit inaccurately, the zoning commission remains the fact finder, as in a traditional zoning case, and there is nothing but a minimal linguistic inaccuracy to indicate otherwise. The court's function in an appeal under § 8-30g (c) (1) is to apply the scope of judicial review, as expressed in subparagraphs (A), (B), (C) and (D), to the pertinent determinations made by the zoning commission. Put another way, the statute contemplates that the zoning commission will have made certain factual determinations in the zoning proceedings, and the court is obligated to review those factual determinations pursuant to the scope of review stated in the statute. Indeed, to read § 8-30g (c) as encompassing a shift of the fact-finding function from the local zoning agency to the court would be a radical departure from basic principles of zoning law. We ordinarily do not read statutes to make radical departures from traditional rules without a clear indication of legislative intent to do so. See, e.g., *Castagno v. Wholean*, 239 Conn. 336, 340, 684 A.2d 1181 (1996) (construing statute to avoid "radical departure from the common law and from the deeply ingrained tradition"). There is no such indication in the language of § 8-30g (c) and, as we discuss in more detail later in this opinion, the legislative history is to the contrary.

With this background in mind, we return to the question of our scope of review under § 8-30g (c) (1) of the defendant's decision denying the application. We note in this connection that, with respect to all of the subparagraphs -- (A) through (D) -- judicial review of the decision is "based upon the evidence in the record compiled before

<sup>12</sup>Because the plaintiff's appeal to the trial court is based solely on the record, the scope of the trial court's review of the defendant's decision and the scope of our review of that decision are the same.

<sup>13</sup>Section 8-30g (c) requires that, in an affordable housing land use appeal, "the burden shall be on the commission to prove, based on the evidence in the record compiled before such commission that (1) (A) the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record . . . ." See footnote 2 of this opinion.

<sup>14</sup>Pursuant to § 8-30g (c) (1), the zoning commission has the appellate burden to establish, based upon the evidence in the record, that "(B) the decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider; [and] (C) such public interests clearly outweigh the need for affordable housing . . . ." See footnote 2 of this opinion.

The plaintiff also argues that, to the extent that what it refers to as dicta in *Kaufman v. Zoning Commission*, 232 Conn. 122, 653 A.2d 798 (1995), and *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, 228 Conn. 498, "can be read to authorize the application of a 'sufficiency of the evidence' standard to all four prongs of the statute, they should be reconsidered." In addition, the amicus curiae appears to argue that the sufficiency of the evidence standard, under the first prong of the statute, means something more than what this court stated its meaning to be in *Kaufman* and *West Hartford Interfaith Coalition, Inc.* The amicus also argues that our conclusion in *Kaufman* that the sufficiency of the evidence standard applies to legislative decisions of zoning commissions acting on affordable housing applications was "only dicta," and should not be applied in the present case. We decline to reconsider those aspects of *Kaufman* and *West Hartford Interfaith Coalition, Inc.*, because, as we explain in the text of this opinion, the statements in those cases are not dicta but holdings, and we are convinced that both cases were decided correctly.

<sup>15</sup>Section 8-30g (c) (1) requires the zoning commission to prove, based on the evidence in the record, that "(D) such public interests cannot be protected by reasonable changes to the affordable housing development . . . ." See footnote 2 of this opinion.

<sup>16</sup>General Statutes § 4-183 (j) provides: "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and *substantial evidence* on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. For purposes of this section, a remand is a final judgment." (Emphasis added.)

<sup>17</sup>For example, in an appeal from the denial of an affordable housing land use application, § 8-30g (c) (1) places a "burden" on the zoning commission to "prove" the criteria set forth in subparagraphs (A), (B), (C) and (D).

[the] commission . . . ." General Statutes § 8-30g (c). Thus, as in a typical zoning appeal, the court's function in the present case is to review the record made in the zoning proceeding.<sup>18</sup>

The question of our scope of review under § 8-30g (c) (1) implicates the question of the relationship between subparagraphs (A), (B), (C) and (D). We conclude that subparagraph (A) states the general scope of review, drawn largely from traditional zoning principles, that applies to subparagraphs (B), (C) and (D).

We first address our scope of review under subparagraph (A), which requires the defendant to establish that "the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence . . . ." We address this aspect of our scope of review because, although the plaintiff does not challenge or seek to change its established meaning in this appeal, we conclude that in effect the four subparagraphs are inextricably linked, and that the general standard of the sufficiency of the evidence applies to subparagraphs (B), (C) and (D).

We first considered our scope of review under General Statutes (Rev. to 1993) § 8-30g (c) in *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, 228 Conn. 498. In the context of a legislative zone change, we held that "the trial court properly applied traditional concepts of judicial review, where appropriate, to its review of the [town council's] decision." *Id.*, 512. In doing so, we reaffirmed and applied two of those traditional concepts that are pertinent to this appeal.

The first concept was that, when the zoning commission acts in its legislative capacity, its conclusions "must be upheld . . . if they are reasonably supported by the record. The credibility of the witnesses and the determination of [questions] of fact are matters solely within the province of the [commission]. . . . The question is not whether the trial court would have reached the same conclusion, but whether the record before the [commission] supports the decision reached." (Internal quotation marks omitted.) *Id.*, 513. We then applied this standard of review, and concluded "that the trial court did not substitute its judgment for that of the [town council] regarding the density of the site." *Id.*, 516.

Second, we reaffirmed the concept that "[w]here a zoning [commission] has stated its reasons for its actions, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations." (Internal quotation marks omitted.) *Id.*, 513. Furthermore, "[t]he zone change must be sustained if even one of the stated reasons is sufficient to support it." (Internal quotation marks omitted.) *Id.* We then applied this standard and concluded "that the trial court in fact searched the record and was unable to find a basis to justify the [town council's] decision . . ." *Id.*, 517-18.

Thereafter, in *Kaufman v. Zoning Commission*, 232 Conn. 122, 653 A.2d 798 (1995), we again addressed the scope of judicial review, under General Statutes (Rev. to 1993) § 8-30g (c), of the denial of a change of zone application for an affordable housing development. We articulated and applied two standards that are pertinent to the present case.

First, we held that, under General Statutes (Rev. to 1993) § 8-30g (c) (1),<sup>19</sup> with regard to the question of whether the zoning commission was required to establish that there was "sufficient" or "substantial" evidence in the record to support its decision, "the correct test is whether [the commission] met the lesser burden of adducing 'sufficient evidence' to support its decision." *Kaufman v. Zoning Commission*, supra, 232 Conn. 150. "The commission's only burden was to show that the record before the [commission] support[ed] the decision reached; *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, [228 Conn.] 513; and that the commission did not act arbitrarily . . . illegally . . . or in abuse of discretion." (Internal quotation marks omitted.) *Kaufman v. Zoning Commission*, supra, 153.

We further defined "sufficient evidence" in this context to mean less than a preponderance of the evidence, but more than a mere possibility. We stated that the zoning commission need not establish that the effects it sought to avoid by denying the application "are definite or more likely than not" to occur, but that such evidence must establish more than a "mere possibility" of such occurrence. *Id.*, 156. Thus, "the commission was required to show a reasonable basis in the record for concluding [as it did]. The record, therefore, must contain evidence concerning the potential harm that would result if the zone were changed . . . and concerning the probability that such harm in fact would occur." *Id.*<sup>20</sup> We then applied this standard and concluded that "none of the evidence [in the record] provided a reasonable basis on which to deny the application"; *id.*,

<sup>18</sup>We need not decide whether the trial court has the authority, under § 8-30g, to take additional evidence. Compare § 8-30g (c) (providing that zoning commission is to establish four criteria of subdivision (1) "based upon the evidence in the record compiled before [the zoning] commission"), with § 8-30g (b) (providing that "[e]xcept as otherwise provided in this section, appeals involving an affordable housing application shall proceed in conformance with the [provision] of [section] 8-8 . . . as applicable"), and General Statutes § 8-8 (k) (providing for authority in court to take additional testimony when it "is necessary for the equitable disposition of the appeal").

<sup>19</sup>When *Kaufman* was decided, General Statutes (Rev. to 1993) § 8-30g (c) had a slightly different structure from the current revision of that statute: the 1993 revision was not divided into two subdivisions, namely, (1) (A), (B), (C) and (D), and (2) (A) and (B), as the current version is. See footnote 2 of this opinion. At the time of *Kaufman*, subsection (c) was divided into subdivisions (1), (2), (3) and (4), corresponding to what is now subsection (c) (1) (A), (B), (C) and (D). Thus, for example, what the court in *Kaufman* referred to as "§ 8-30g (c) (2)"; *Kaufman v. Zoning Commission*, supra, 232 Conn. 154; is now § 8-30g (c) (1) (B).

Section 8-30g (c) now requires the zoning commission in question to establish, "based upon the evidence in the record compiled before such commission that (1) (A) the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record . . ." See footnote 2 of this opinion.

<sup>20</sup>In *Kaufman*, we referred to some of the legislative history in support of our interpretation of the meaning of "sufficient evidence in the record." See *Kaufman v. Zoning Commission*, supra, 232 Conn. 152-53 n.20 ("As Representative Richard D. Tulisano explained, the term 'sufficient evidence' . . . means '[e]nough evidence for one to reach a particular conclusion . . . I think that they will have to have something on the record that third parties can look at in an objective manner and reach the same conclusion. It is not a very high standard whatsoever, and so I think the Representative is correct that [it] is just a matter of fact that something has to be there and they will have sustained their burden.' 32 H.R. Proc., Pt. 30, 1989 Sess., p. 10579.").

We now take this opportunity to reaffirm that interpretation. Indeed, there is ample other legislative history that supports our prior interpretation. See, e.g., 32 H.R. Proc., supra, pp. 10,578-79, colloquy between Representatives Tulisano and Dale W. Radcliffe ("sufficient evidence" does not mean preponderance of evidence or more probable than not); *id.*, p. 10,600, remarks of Representative William J. Cibes, Jr. (proposal "is a form of judicial review of land use decisions, which merely extends the judicial review, which is already in place"); *id.*, pp. 10,619-22, colloquy between Representatives Cibes and William H. Nickerson (intent of amendment of initial bill from "substantial" to "sufficient" evidence was to effect "a lower standard than substantial evidence"; "to lower the burden of proof for the community"; "to ratchet down the level of interest that is required for the commission to demonstrate that it is correct"); *id.*, pp. 10,673-74, remarks of Representative Miles S. Rapoport ("The bill that's before us today was not the original proposal of the [Blue Ribbon Commission on Housing; Public Acts 1987, No. 87-550, § 4 (a);] and certainly not of the subcommittees of the commission that worked on it. The original proposal was a much stronger proposal. To hear some of the rhetoric directed at today's, at this bill, and in particular, at this amendment, you'd think that we were proposing a state authority with the power to override Zoning Board decisions. That kind of body in fact exists in Massachusetts and in fact was seriously considered by the Blue Ribbon Commission, but rejected as something that here in the land of steady habits would be too strong and too much of a departure from our ways and so the proposal got watered down just to a body that could be appealed to and then watered down further to judicial review with a small change from current law that the burden of proof for the denial of an affordable housing project rests with the town as opposed to with the people who want to build affordable housing. It seems to me that this is the smallest step that we can take. It is hardly a major departure from constitutional norms or from the freedom of choice that exists for towns. It is a small step in putting forward that the towns have to be able to show that they have considered and rejected the need for affordable housing before they make a decision. I don't think that's very much of a burden to ask.").

The Senate legislative history is to the same effect. See, e.g., 32 S. Proc., Pt. 12, 1989 Sess., p. 4048, remarks of Senator Richard Blumenthal, the floor sponsor of the bill ("[this bill] sets a standard of review that places a reasonable burden on that land use agency to justify on the record and from its own record why an adverse decision is made with respect to a specific project . . . and do[es] not provide for any kind of general zoning override"); *id.*, p. 4049 ("Modifications have been made and I should stress, significant modifications, by the House Amendment to take [account] of the concerns that have been raised by localities with respect to the possible ramifications of this legislation. The standard of review has been changed. Very significantly been changed, so that only sufficient evidence, not substantial evidence as was in the file copy, but only sufficient evidence must be produced to justify the land use body decision."); *id.*, p. 4953 ("In our consideration of various standards of proof and procedures we considered others. But since the review is one that is made on the basis of the existing record, not a trial de novo, we felt that it was appropriate for the land use body to bear the burden, simply of showing in the record what the basis was for its decision . . .").

Senator Blumenthal also stated: "I think that we would be remiss if we didn't at some point in this debate make clear for purposes of legislative intent the strong concern that many of us feel, both supporters and opponents that the judicial review procedure be sensitive to local interests and needs and concerns and that under the rubric of the interests that are legitimately to be considered that judges be extremely sensitive to those interests and whatever other legitimate interests may be presented by way of public health, safety and other matters, including for example, related to education or transportation congestion and the like, that is the basis and the condition on which many of the Circle will vote for this legislation and reflecting the concerns that have been voiced by Senator [Kevin] Sullivan and others,

160; because "there is nothing in the record that supports anything but a mere possibility that the requested zone change would" cause the harm that the commission envisaged by the zone change. (Internal quotation marks omitted.) *Id.*, 162.

Second, we implicitly recognized the relationship between then subdivisions (1) and (2) of General Statutes (Rev. to 1993) § 8-30g (c) by applying the "sufficient evidence" standard, as articulated under subdivision (1), to subdivision (2) as well. In effect, we read the general language of General Statutes (Rev. to 1993) § 8-30g (c) (1) -- "the decision . . . and the reasons cited for such decision are supported by sufficient evidence in the record" -- to apply to the more specific requirement of General Statutes (Rev. to 1993) § 8-30g (c) (2) that "the decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider . . . ." See *Kaufman v. Zoning Commission*, supra, 232 Conn. 154.

We began this analysis in *Kaufman* by outlining the zoning commission's burden under General Statutes (Rev. to 1993) § 8-30g (c) (2), now § 8-30g (c) (1) (B). "[T]he commission was required to show that, on the basis of the evidence in the record . . . the decision [was] necessary to protect substantial public interests . . . ." *Kaufman v. Zoning Commission*, supra, 232 Conn. 154. We then explained that this imposed two burdens on the zoning commission. "First, the commission was required to establish that it reasonably could have concluded that 'substantial public interests' were implicated by the zone change, in light of the record evidence as to both the level of harm that could result from the zone change and the probability that the zone change would cause that harm. Second, the commission was required to establish that, on the basis of the record, it reasonably could have concluded that the decision to deny the zone change was 'necessary' -- i.e., that any such public interests could not be protected if the zone change were granted." (Emphasis added.) *Id.*

We then stated our disagreement with the zoning commission's contention that it "was entitled to reject this plaintiff's application based on the mere possibility that the zone change would harm the [watershed property]. . . . [T]he commission was required to show a reasonable basis in the record for concluding that its decision was necessary to protect substantial public interests. The record, therefore, must contain evidence concerning the potential harm that would result if the zone were changed . . . and concerning the probability that such harm in fact would occur." *Id.*, 156. After reviewing the evidence in the record, we then concluded that "there is nothing in the record that supports anything but a mere possibility that the requested zone change would harm the environment. The record contains no evidence quantifying the potential level of harm to the [watershed property] or estimating the probability that the harm would occur if the zone change were granted." (Internal quotation marks omitted.) *Id.*, 162.

This analysis demonstrates that, in interpreting and applying what is now subparagraph (B) of § 8-30g (c) (1) in *Kaufman*, we applied the same standard that we previously had delineated as defining the phrase "sufficient evidence in the record" under subparagraph (A) of § 8-30g (c) (1). Our focus on what the zoning commission reasonably could have concluded on the basis of the record evidence, as opposed to what was a mere possibility on the basis of that evidence, was drawn directly from our analysis of the meaning of "sufficient evidence in the record" under subparagraph (A). Put another way, in determining whether the commission had sustained its burden under subparagraph (B) of establishing that its decision was "necessary to protect substantial interests in health, safety, or other matters which the commission may legally consider," the court does not itself weigh the record evidence. Instead, the court applies the "sufficient evidence in the record" test of subparagraph (A). The court reviews the evidence and asks whether there was sufficient evidence for the commission, based on that evidence, reasonably to have concluded that there was some probability, not a mere possibility, that its decision was necessary to protect those interests.

We are persuaded, moreover, that we were correct, in *Kaufman*, in applying the meaning of "sufficient evidence in the record" under subparagraph (A) of § 8-30g (c) (1) to subparagraph (B) of § 8-30g (c) (1), and that the same analysis applies to subparagraphs (C) and (D) of § 8-30g (c) (1) as well. In other words, the court's task in determining whether the zoning commission has satisfied its burden under subparagraphs (C) and (D), is not to weigh the evidence itself. The court's task rather, is to review the evidence and determine whether, based upon that evidence, there was sufficient evidence for the commission reasonably to have concluded that: (1) the "public interests" that the commission sought to protect "clearly outweigh the need for affordable housing"; General Statutes § 8-30g (c) (1) (C); and (2) "such public interests cannot be protected by reasonable changes to the affordable housing development . . . ." General Statutes § 8-30g (c) (1) (D). We reach this conclusion for several reasons.

First, although § 8-30g (c) (1) is phrased as if subparagraph (A) were separate and independent of subparagraphs (B), (C) and (D), a careful analysis of the entire subsection strongly suggests that, to the contrary, the "sufficient evidence in the record" standard of subparagraph (A) must also apply to subparagraphs (B), (C) and (D). Subparagraph (A) refers to the "decision" of the zoning commission and "the reasons cited for such decision," and requires that the decision and those reasons be "supported by sufficient evidence in the record." Textually, subparagraphs (B), (C) and (D) then build on that standard by referring to the "decision" and by requiring the commission to establish that the decision was "necessary to protect substantial public interests"; General Statutes § 8-30g (c) (1) (B); that those "public interests clearly outweigh the need for affordable housing"; General Statutes § 8-30g (c) (1) (C); and that "such public interests cannot be" otherwise protected. General Statutes § 8-30g (c) (1) (D). Each of the four subparagraphs, therefore, inextricably is linked textually with the others.

Furthermore, as the present case demonstrates, those very reasons are themselves ordinarily what the zoning commission will state under subparagraphs (B), (C) and (D) of § 8-30g (c) (1) as the justification for its decision. In this case, the defendant, in giving its reasons for its decision to deny the application, gave reasons that were phrased in terms of subparagraphs (B) and (C) explicitly, and (D) implicitly. The defendant explicitly cited the public interests in traffic safety, water supply preservation and open space; it explicitly concluded that these interests outweighed the need for public housing; and it implicitly concluded that no reasonable changes to the proposed development could protect those interests. The legislature undoubtedly contemplated that, in the typical case, subparagraph (A) would provide the scope of review for subparagraphs (B), (C) and (D).

Second, each of the four subparagraphs is preceded by the generally applicable phrase, "the commission to prove, based upon the evidence in the record compiled before [it] . . . ." General Statutes § 8-30 (c) (1). The purpose of this provision is to make clear that judicial review must be based on the zoning record returned to the court -- not on the basis of a trial de novo. This conclusion is buttressed by the legislative history. See 32 H.R. Proc., Pt. 30, 1989 Sess., p. 10,578, remarks of Representatives Dale W. Radcliffe and Richard D. Tulisano ("[the phrase] in the record compiled before the commission . . . is designed to make sure there is no trial de novo"); 32 S. Proc., Pt. 12, 1989 Sess., p. 4053, remarks of Senator Richard Blumenthal ("the review is one that is made on the basis of the existing record, not a trial de novo"). This generally applicable scope of review provision strongly supports the conclusion that each of the subparagraphs of § 8-30g (c) (1) embodies the "sufficient evidence" standard, because that is the only standard for judicial scope of review established by the statute, and because to conclude otherwise would require a review that would be virtually identical to a trial de novo by the court.

Third, the legislative history supports our conclusion that the standard of "sufficient evidence in the record," articulated explicitly in subparagraph (A) of § 8-30g (c) (1), also applies under the other subparagraphs. In a colloquy with Representative Tulisano, the floor sponsor of the bill, Representative Radcliffe, stated, without contradiction, as follows: "[A]s I read [subsection (c)] and then I think it's a correct reading, the municipality would have the burden of going to court and proving by sufficient evidence that standard that's developed in the record that these several factors are met, that is, decisions necessary to protect health, safety and welfare, public interest, should outweigh the need for affordable housing." 32 H.R. Proc., supra, p. 10,580.

Fourth, as we have explained, in *Kaufman*, we already have applied, and thus implicitly deemed applicable, the scope of review under subparagraph (A) of § 8-30g (c) (1) to subparagraph (B). There is no basis in the statutory language or history to warrant the application of a different scope of review under subparagraphs (C) and (D).

## II

Having explicated our scope of review of the defendant's decision, we turn to the plaintiff's specific challenges to the trial court's judgment affirming that decision. Applying the appropriate scope of review, we affirm that decision.

### A

The plaintiff's first claim is that the trial court did not determine whether the defendant had met all four of the requirements of § 8-30g (c) (1) had been met by the defendant. Specifically, the plaintiff argues that the trial court "dismissed the plaintiff's appeal without finding that the record evidence satisfied each prong of § 8-30g (c) [1] . . ." We disagree.

This claim is premised on a misreading of the trial court's memorandum of decision. The court specifically stated that it found "that the [defendant's] decision is supported by sufficient evidence in the record, and otherwise complies with the requirements of § 8-30g (c) [1]." (Emphasis added.) The court further stated that, because of this conclusion, "it is not necessary to discuss more than one reason given by the [defendant] which meets the requisite standard." The court then focused on the defendant's "concern over endangerment of a potential future water supply," and concluded, based on the court's evaluation of the entire record, that the defendant "was justified in denying the application because the proposed development may destroy a potential future source of public water." The court then turned to the remaining three requirements of § 8-30g (c) (1). It concluded that its "foregoing discussion of § 8-30g (c) (1) [A] encompasses, in large measure, [subparagraph (B)] as well. That the defendant is free to consider endangerment of a potential future source of public water, as 'a substantial public interest in health, safety or other matters which the [the defendant] may consider' is beyond cavil." Regarding § 8-30g (c) (1) (C), the trial court considered the statement of the defendant's fifth reason, namely, that "these considerations outweigh the need for

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the anticipation of this Legislature and this Body is that there will be sensitivity to those concerns, that not only suburban and rural but also urban areas will be given that deference to the extent that it is justifiable under the burden of [proof] to which towns may be subjected." *Id.*, p. 4072.

affordable housing at this site, especially because of the availability of other parcels in town suitable for affordable housing' . . . as a proper statement of the balancing required by § 8-30g (c) [(1) (C)]." With respect to § 8-30g (c) (1) (D), the trial court specifically "accept[ed] the [defendant's] argument that loss of a potential public water supply is both a site specific issue and one which is implicated by development with or without 'reasonable changes.'" Therefore, the trial court considered each prong of § 8-30g (c) before concluding that the defendant's denial of the application was justified.

#### B

The plaintiff next claims that the trial court improperly failed to consider each of the reasons advanced by the defendant in denying the application. The plaintiff argues that, because the key purpose of the statute is to encourage and facilitate the development of affordable housing in the state, a reviewing court must "consider all of the zoning agency's reasons for denial of an application. If the court determines that some of the reasons are invalid, then the matter should be remanded back to the agency because there is no way of knowing whether the invalid reasons infected the entire decision." In effect, this claim challenges our conclusion, articulated in *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, 228 Conn. 513, that under § 8-30g (c) (1), "[t]he zone change must be sustained if even one of the stated reasons is sufficient to support it." We are not persuaded.

There can be no doubt that, under traditional notions of judicial review of legislative zoning decisions, it is settled law that a zone change must be sustained if one of the stated reasons is supported by sufficient evidence. See *id.*; *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission*, supra, 220 Conn. 544; *First Hartford Realty Corp. v. Plan & Zoning Commission*, 165 Conn. 533, 543, 338 A.2d 490 (1973). Traditional concepts of judicial review of zoning decisions apply to appeals from denials of affordable housing applications, where appropriate. *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, 228 Conn. 512. The plaintiff does not point to any language in § 8-30g (c) (1) as support for its interpretation of the statute, and we perceive none. We reaffirm, therefore, that an affordable land use decision is sustainable if any one of the reasons stated by the zoning agency is supported by sufficient evidence in the record, the standard articulated by subparagraph (A) of § 8-30g (c) (1), and properly applied to subparagraphs (B), (C) and (D).

Furthermore, the legislative history of § 8-30g (c) (1) makes clear that, except insofar as the statute specifies otherwise, such as we have indicated previously, traditional concepts of judicial review are to prevail. See footnote 20 of this opinion. There is nothing in that legislative history to suggest that the legislature intended to supplant this particular traditional aspect of judicial review. Indeed, the legislative history is replete with indications that, except insofar as the statute requires otherwise, either explicitly or implicitly, the legislature intended the process to be the same as in traditional zoning cases.<sup>21</sup>

In addition, the rule that the plaintiff proposes would discourage zoning agencies from fully articulating their reasons in denying an application. If, whenever an agency gave its reasons and, on judicial review, one of those reasons was determined not to be supported by sufficient evidence -- for example, by evidence showing only a possibility but not a probability of harm to a protected interest -- the entire case would have to be remanded for a redetermination by the agency. Under such a regimen, in the case of a close call on any given reason in the first instance, there would be an undue incentive for the agency to exclude that reason from its decision, because it would create a risk of reversal by the court and a subsequent reweighing process by the agency, long after it had rendered the original decision. We do not think that the legislature intended to create such a disincentive because public policy is better served by encouraging, rather than discouraging, a public agency to express all of the reasons for its decisions.

The plaintiff contends that the "public policy embodied in § 8-30g of providing fair access to housing and expanding housing opportunities for all citizens of Connecticut makes the application of this rule inappropriate in affordable housing appeals." We agree with this statement of the public policy animating § 8-30g. We disagree, however, that this policy requires or justifies, in the absence of appropriate legislative language and in the face of contrary legislative history and public policy, an interpretation of the statute that embodies the rule that the plaintiff urges.

#### C

The plaintiff's final claim is that the defendant did not meet its burdens under § 8-30g (c) (1). We disagree.

The defendant gave three substantive reasons for its decision that are in contention in this appeal.<sup>22</sup> They may be summarized as: (1) traffic hazards; (2) preservation of open space; and (3) endangerment of a potential future public water supply. The trial court focused on the third reason, namely, endangerment of a potential future water supply. We focus on the second reason, namely, the preservation of open space, because in our view, of the three reasons, the record evidence supporting that reason most clearly satisfies the defendant's burdens under the statute.<sup>23</sup> We reiterate that our scope of review of the defendant's decision denying the plaintiff's application is the same as that of the trial court. See footnote 12 of this opinion.

The defendant's second reason was: "It is in the best interest of the Town to provide open space in order to meet local and regional needs. Further, the 1994 Town Plan of Development recommends that [Metropolitan] lands in the Keeney Street area be considered for Town purchase and preservation as open space." In order to satisfy its burden under § 8-30g (c) (1) with respect to this reason, the defendant must satisfy several requirements.

Pursuant to subparagraph (B) of § 8-30g (c) (1), it must establish that there was sufficient evidence in the record for it reasonably to have concluded that the "substantial public [interest]" in the preservation of open space<sup>24</sup> was "necessary to protect [such] public [interest] . . ." Under *Kaufman v. Zoning Commission*, supra, 232 Conn. 122, this means that the defendant must establish that it reasonably could have concluded, based on the record evidence, that (1) there was some quantifiable probability - more than a mere possibility but not necessarily amounting to a preponderance of the evidence -- that the legitimate preservation of open space would have been harmed by the zone change, and (2) the preservation of open space could not be protected if the zone change were granted.

Pursuant to subparagraph (C) of § 8-30g (c) (1), the defendant must establish that there was sufficient evidence in the record for it reasonably to have concluded that the public interest in preserving open space "clearly outweigh[ed] the need for affordable housing . . ." In both *Kaufman v. Zoning Commission*, supra, 232 Conn. 166 n.25, and *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, 228 Conn. 521-22 n.23, we reserved the question of whether "the need for affordable housing" was to be determined on a local or a regional basis. We now address this question, because in the present case the defendant specifically phrased its reasons for denying the plaintiff's application in terms of "the availability of other parcels in town suitable for affordable housing." (Emphasis added.) We conclude that the need for affordable housing is to be addressed on a local basis.

Although the language of the statute does not specifically address this question, its legislative history makes clear the legislative intent to confine the inquiry to the specific municipality in which the affordable housing development is to be located. As the affordable housing land use bill originally was reported out of committee and presented to the House of Representatives, it referred to "the need for affordable housing in the region in which the [affordable] housing development [will be] located, as such need is determined by the regional planning agency [in that] region . . ." (Emphasis added.) Substitute House Bill No. 7270, 1989 Sess., Connecticut General Assembly (File No. 598). On the House floor, however, a substitute bill, known as House Amendment Schedule A, was the bill actually considered and enacted by the legislature. Under that bill, the preceding italicized language had been eliminated. This elimination was purposeful. Representative William H. Nickerson inquired of Representative William Cibes, one of the proponents of the bill, regarding the effect of that elimination. Representative Cibes responded: "[T]he intent is to make very clear that it is the municipality's responsibility to care for the housing needs of its citizens and not some broader community." Representative Nickerson then responded to Representative Cibes: "Thank you. So that the effect of the amendment would read the same if it were to say after the words 'affordable housing' if it were to say, though it doesn't say, 'in the town in question' that would put the same meaning on the amendment as does the amendment before us without those words. Is that correct . . .?" Representative Cibes responded: "I think that

<sup>21</sup>Although the plaintiff does not make the argument, it might be argued that the requirement in § 8-30 (c) (1) (C) that "such public interests clearly outweigh the need for affordable housing"; (emphasis added); supports the proposition that the court must examine *all* of the stated reasons for evidentiary sufficiency. We are not persuaded, however, that this use of the plural, rather than, for example, "such public interest or interests," was intended by the legislature to signify a departure from the traditional principle that if one stated reason is supported by the record the zoning decision must be sustained. The legislative history belies such an intent.

<sup>22</sup>See footnote 5 of this opinion and accompanying text.

<sup>23</sup>This conclusion renders it unnecessary to determine whether the defendant has met its burdens with respect to the other two reasons. Therefore, we express no opinion on the sufficiency of the evidence regarding either the traffic hazards or the threat to a potential water supply, purportedly engendered by the plaintiff's application. Furthermore, we do not decide whether, as the plaintiff suggests, the defendant had an obligation, instead of denying the application outright, to initiate a dialogue with the plaintiff in order to determine whether these reasons could have been accommodated by reasonable changes to the plaintiff's plan.

<sup>24</sup>The plaintiff does not contend that the preservation of open space is not a "substantial public [interest] . . . which the commission may legally consider . . ." General Statutes § 8-30g (c) (1) (B). Indeed, that would be a difficult contention to sustain, in light of the strong statutory policies in favor of the preservation of open space in the state. See, e.g., General Statutes § 12-107a ("[i]t is hereby declared . . . that it is in the public interest to encourage the preservation of farm land, forest land and open space land . . . to conserve the state's natural resources and to provide for the welfare and happiness of the inhabitants of the state"); General Statutes § 22-26aa ("the conservation of certain . . . natural drainage areas and open space areas is vital for the well-being of the people of Connecticut").

is generally the intent." 32 H.R. Proc., supra, pp. 10,622–23. This legislative history compels the conclusion that the legislature intended the need for affordable housing to be determined on the basis of the need for such housing in the local community, as opposed to a regional or statewide basis.<sup>25</sup>

Pursuant to subparagraph (D) of § 8-30g (c) (1), the defendant must establish that there was sufficient evidence in the record for it reasonably to have concluded that the public interest in preserving open space could not have been "protected by reasonable changes to the affordable housing development." It may be that, as the plaintiff argues, in certain cases this provision may require the local zoning agency considering an affordable housing application to disclose to the applicant a substantial public interest that the agency has identified as harmed by the proposed development that could nonetheless be protected by reasonable changes, and to make reasonable efforts with the applicant to see if such changes are feasible, before denying the application on the basis of such a public interest. We need not decide that question here, however, because, we conclude that, where a sufficiently supported reason for denial is site specific, such that no changes to the development reasonably can be contemplated by the agency that will protect the substantial public interest that the agency has identified, that circumstance will satisfy the commission's obligation under subparagraph (D). This conclusion follows from the statutory requirement that "such public interests cannot be protected by *reasonable changes* to the affording housing development . . ." (Emphasis added.) General Statutes § 8-30g (c) (1) (D). If the identified public interest is site specific in the sense that we have stated, then by definition there can be no such reasonable changes to the affordable housing development that will protect the identified interest.

The record contains the following evidence in support of the defendant's decision to deny the application based on the need to preserve open space. Although the parcel in question was denominated as "fringe suburban" on the town's plan of development map, when the plan and zoning commission reported to the defendant, the commission stated: "The 1984 Plan of Development map designates the subject parcel Fringe Suburban. Text portions of the Plan recommend that all [Metropolitan] lands be considered for Town purchase and preservation as open space. Since prior Plan of Development maps have designated all [Metropolitan] owned lands as open space, the designation of the subject parcel as 'Fringe Suburban,' rather than 'Open Space and Watershed' like the rest of the [Metropolitan's] Salmon Brook Reservoir property,<sup>26</sup> is an apparent clerical error." The testimony of the town's community development director before the plan and zoning commission confirmed that it was a clerical error in the 1984 plan of development, based on the fact that, at that time, the zoning map did not have property lines on it and the plan did not intend to separate any [Metropolitan] holdings. Furthermore, the 1984 plan contains a written policy statement to "[e]ncourage the continuation of [Metropolitan] open space lands at Keeney Street . . . as Town open space should [Metropolitan] offer said land for sale." In addition, when the conservation commission submitted its statement of concerns to the plan and zoning commission, among those concerns was the following: "The 1970 Plan of Development states in regard to open space needs: 'Should [Metropolitan] or the Manchester Water Company decide to liquidate any of their holdings, the Town or the State should negotiate to purchase some of those areas which have the most significant open space and recreation possibilities.' The 1984 Plan of Development, in its policy statements regarding Public and Quasi-Public Landholdings, states (p. 26): 'Encourage the continued preservation of existing public open space with careful analysis and contingency planning for possible Town acquisition should all or part of [Metropolitan], Town of Manchester Water Company, or State forest lands become available.' (Such contingency planning for [Metropolitan's] Keeney Street property was ordered by the [defendant] early in March, 1994.) And the State's Conservation and Development Policies Plan for 1992–1997 classified [Metropolitan's] holdings in the category of 'Conservation Areas,' as shown on its Locational Guide Map dated May, 1992."

In addition, numerous town residents testified before the defendant to request that the parcel in question be preserved for open space and conservation purposes. That testimony was the continuation of a long history of town efforts to keep the parcel in question, and the larger parcel of Metropolitan property of which it is a part, as open space.

As early as April, 1971, the town unsuccessfully had offered to purchase the specific parcel in question from Metropolitan, "for permanent open space and conservation purposes," noting further that the "Salmon Brook Reservoir is a most desirable open space resource in the region," and that the "proposed acquisition is part of larger picture. The District owns considerable land in Glastonbury, including the Salmon Brook Reservoir . . . All of these lands are desirable for open space and conservation uses."

In June, 1972, Daniel W. Lufkin, then commissioner of the state department of environmental protection, had written to Metropolitan requesting that it dedicate the entire Salmon Brook Reservoir property "as an open space or recreational area," either on its own or through a lease of the property to the state for such use "as one element in a circular chain of regional parks serving the Hartford Metropolitan Area."<sup>27</sup> The town, having been sent a copy of the commissioner's letter, responded informing him of the town's unsuccessful attempt either to secure from Metropolitan a permanent conservation and open space easement on the property, or to purchase the property from Metropolitan in order to preserve it as open space.<sup>28</sup> Shortly thereafter, in July, 1972, a town committee formulated two "preference plans" regarding Metropolitan property. The "first preference plan" was to acquire "[t]he entire 600 acre parcel . . . for open space and recreational purposes. This might be accomplished by petitioning the State to purchase the land as State Forest, or via some regional or State-local cooperation. Situated in close proximity to the proposed I-86, this land is readily accessible to the entire Hartford Metropolitan area, and could be developed with lakes, camping, picnicking, athletic areas, bridle paths, nature trails, etc." The "second preference plan" involved only the particular parcel in question in this case. This plan, "in harmony with previous recommendations by the Conservation Commission, consider[ed] the outright acquisition of [the parcel] as essential. The open fields now on this land are ideal for active recreation such as baseball fields, tennis courts, etc. The small dry reservoir could be easily restored and, though it is probably not suitable for swimming, it could lend itself to fishing in the summer and ice skating in the winter . . . The existing pine forest is ideally suited for a large picnic area because of its natural beauty and its proximity to the aforementioned pond and athletic fields."

In August, 1977, Donald C. Peach, then town manager of Glastonbury, issued a report on the Salmon Brook Reservoir. This report noted that the "issue of the Salmon Brook Reservoir and its disposition goes back a long time. . . . The Town has recognized for some time that the property will not forever stay as open space unless it takes positive action. Either [Metropolitan] will sell or develop the property or it will seek another use for the land." It then reiterated the numerous efforts of the town "to preserve all or parts of the reservoir for public, institutional, or recreational uses, [and] protect it from development." The report also noted that, "[e]xcept for the sale of three parcels, one to the Town for a firehouse, a second to the state for future relocation of Manchester Road, and a third to St. Dunstan's Parish for a church, the reservoir boundaries have remained unchanged for decades." The report concluded by recommending that, with respect to the specific parcel involved in this case, the town acquire it for open space, consistent with the "Second Preference Plan" articulated in July, 1972.

Thus, the defendant had before it a record replete with evidence that, consistently for nearly twenty-five years, beginning at the latest in April, 1971, and continuing to March, 1994, just a few months before the defendant's hearing in this case, the town had viewed the parcel in question, along with the rest of Metropolitan land, as

<sup>25</sup>Moreover, this conclusion is consistent with subsection (f) of § 8-30g, which exempts from the special appeal provisions of the act those *municipalities* in which 10 percent of the housing is either assisted housing, housing financed by the Connecticut Housing Finance Authority, or certain deed restricted housing, irrespective of the need for affordable housing in the regions surrounding such towns.

<sup>26</sup>The area in which the parcel is located is known generally as the Salmon Brook Reservoir property.

<sup>27</sup>In a letter dated June 2, 1972, Lufkin wrote to Metropolitan: "It has come to my attention that the Metropolitan District Commission desires to sell its 630-acre Salmon Brook Reservoir property in Glastonbury and Manchester. As you know, we are greatly concerned over development threats to watershed lands which form a large share of the total open space available along the urban spine of Connecticut running from Hartford and thence along the Sound to Greenwich. . . . As you well know, the population of the Greater Hartford area is growing rapidly. In the face of this vast increase, the Capital Region Planning Agency [CRPA] has proclaimed the need for a substantial increase in open space acreage to service this population. A key part of this effort must be to stabilize existing public and quasi-public open space such as the Salmon Brook Reservoir property, shown on both the CRPA and Glastonbury plans of development as open space. Thus I am sure you see our concern when we see a handsome tract of public property only seven miles from downtown Hartford being threatened. When one realizes that there are approximately 400,000 people within a ten-mile radius of this property, this concern understandably increases. In fact, we feel the Salmon Brook Reservoir has great potential as one element in a circular chain of regional parks serving the Hartford Metropolitan area. Therefore I would like to suggest that [Metropolitan] consider dedicating this beautiful property as an open space or recreational area. If [Metropolitan] feels that it cannot take on the responsibility of direct operation, why not consider leasing it to the State for such use? If such a lease could be arranged, I am sure that we could intervene with the towns concerned to remove your existing tax burden."

<sup>28</sup>By letter dated June 16, 1972, Donald C. Peach, then town manager of Glastonbury, wrote to Lufkin: "Thank you for a copy of your letter of June 2, 1972 to Mr. Edward J. McDonough, Chairman of the Metropolitan District Commission, regarding preservation of [Metropolitan] reservoirs in Glastonbury as open space. You may be interested in a previous effort by the Town of Glastonbury to negotiate preservation of these reservoirs as open space. . . . A proposal was made to the administration of [Metropolitan] . . . which proposal consisted of two alternatives: (1) Reduction of taxes to a token amount, such as \$1.00 per year, on its reservoir lands in return for a permanent conservation and open space easement. (2) Reduction of taxes as above with no easement but to the difference between the reduced taxes and taxes normally levied to be applied towards purchase by the Town each year of certain previously agreed upon acreage. For various reasons [Metropolitan] was not agreeable to the above. . . ."

particularly appropriate for open space, conservation and recreational purposes, not only for the residents of the town, but for the greater Hartford area in general. In addition, the record contains ample evidence that this was much more than an idle or passing thought for the town, which had planned for and on several occasions attempted to purchase the particular parcel in question for those purposes, or encouraged the state to do so as part of a regional plan.

Under § 8-30g (c) (1) (B), this evidence was sufficient for the defendant reasonably to have concluded that there was a quantifiable probability that the interest in the preservation of open space would have been harmed by granting the plaintiff's application, and that this interest could not be protected if the zone change were granted. This probability was more than a mere possibility; it was a certainty. It goes without saying that granting the plaintiff's application for residential development on the parcel in question effectively would have precluded its preservation for open space, conservation and recreational uses.

This is not to say, however, that simply because an affordable housing land use application is for an undeveloped parcel of land that the town will succeed in justifying its denial on the basis of preservation of open space and conservation. We emphasize that, in this case, the parcel in question had a long history of town recognition as particularly appropriate for such uses, and of unsuccessful town efforts to acquire it for those uses. This history precludes any possible inference of pretext on the part of the town, and amply justifies its reliance on the protection of that substantial public interest.

We are not persuaded, moreover, by the plaintiff's reliance on the facts that (1) historically, Metropolitan acquired this parcel separately from the larger parcel located on the other side of Keeney Street, and that the parcel is taxed separately by the town, and (2) this parcel occupies only approximately 5 percent of the total acreage owned by Metropolitan, of which the town already has approved three parcels for nonopen space development. The record sufficiently supports the determination that the town always has viewed the entire Metropolitan holdings together, for purposes of open space and conservation. Also, the fact that in the past the town has granted permission for three other parcels, far removed from the parcel in this case, for nonopen space uses -- for widening Manchester Road, for a town firehouse and for a church -- does not preclude the town from adhering to the open space policy for this parcel. In addition, the particular parcel in question has long been viewed by the town as particularly appropriate for such uses, apart from the remainder of Metropolitan holdings. Furthermore, the fact that this parcel is only a small part of the larger open space potential, does not compel the town to eliminate it from its policy in favor of such preservation. The logic of that argument would mean that a town must permit parcel-by-parcel development of land that it otherwise wants to preserve as open space until some finite amount of open space is left. Neither the affordable housing land use act nor our zoning law in general shifts such determinations from the town's legislative body to the court.

Under § 8-30g (c) (1) (C), the defendant must establish that there was sufficient evidence in the record reasonably to have concluded that the public interest in preserving open space clearly outweighed the need for affordable housing in Glastonbury. In its fifth reason, the defendant stated: "These considerations outweigh the need for affordable housing at this site, especially because of the availability of other parcels in town suitable for affordable housing."<sup>29</sup> The following evidence sufficiently supported this determination by the defendant.

In October, 1989, the town approved the Capitol Region Fair Housing Compact on Affordable Housing (compact). Under that compact, which was signed<sup>30</sup> by representatives of twenty-nine cities and towns in the greater Hartford area, "[e]ach municipality commits to make its best effort to satisfy 25 [percent] of its local shortfall in affordable housing<sup>31</sup> over the next [five] years." A June, 1993 annual progress report on the compact indicated that, as of March, 1993, the town had met 55 percent, or 122 of its compact goal of 220 affordable housing units. In addition, the town zoning regulations contain a planned area development provision that encourages affordable housing by providing density bonuses for such development. The members of the defendant town council were also entitled to take into account their own personal knowledge of other affordable housing units in the town. See *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, 228 Conn. 518; *Frito-Lay, Inc. v. Planning & Zoning Commission*, 206 Conn. 554, 570, 538 A.2d 1039 (1988). Thus, they knew that the town recently had approved a different affordable housing development, pursuant to which ten additional units were to be constructed soon, in addition to the 122 units that had been constructed. The record indicated that they also had relied on their knowledge that there were other sites in town that were suitable for affordable housing, in that there were such sites that were served by gas, water and sewer. Moreover, the plaintiff makes no claim that there are no other sites in the town that are suitable for affordable housing development. Finally, the defendant weighed this evidence of alternative sites together with its interest in protecting the substantial public interest in the preservation of open space, conservation and recreation on the specific parcel in question. On this record, we conclude that the defendant had a reasonable basis upon which to conclude that the public interest in the protection of open space, conservation and recreation clearly outweighed the need for affordable housing in the town. It cannot be denied that granting the plaintiff's application would have excised that particular parcel from the remaining acres of Metropolitan's land, and effectively would have eliminated its use for open space, conservation and recreation.

It is true that, as the plaintiff points out, as of 1993, only approximately 6 percent of the town's housing units were affordable housing -- an amount that is less than the 10 percent that would, pursuant to § 8-30g (f), exempt the town from the special appeals provisions of § 8-30g (c). In light of the record evidence, however, this fact does not compel the conclusion that the defendant acted unreasonably in weighing the protection of open space, conservation and recreational uses of the particular parcel in question, against the need for affordable housing in the town.

Much the same reasoning applies to the defendant's burden under subparagraph (D) of § 8-30g (c) (1). As we have explained, where the public interest sought to be protected and the harm to that interest by granting the application is site specific, in that no changes to the proposed affordable housing development reasonably can be effected to protect that interest on that specific site, the zoning commission has satisfied its burden under subparagraph (D). In the present case, it was reasonable for the defendant to conclude that, by granting the application, the defendant effectively would eliminate the parcel in question from use for open space, conservation and recreation and that residential development of the parcel would be wholly inconsistent with such uses. The fact that the proposed development contained some open space does not change those facts. There was sufficient evidence in the record for the defendant to have concluded that a 33.42 acre, twenty-eight unit residential subdivision, bisected by thirteen acres of open space, simply is not the same thing as 33.42 acres of open space.

The judgment is affirmed.

In this opinion CALLAHAN, C. J., and NORCOTT, KATZ, PALMER and MCDONALD, Js., concurred.

#### {CHRISTIAN ACTIVITIES COUNCIL v. TOWN COUNCIL -- CONCURRENCE}

MCDONALD, J., concurring. I join the majority opinion. I write separately only to add that, with respect to part II C, I believe that the trial court properly focused on the effect of development upon the watershed and its conservation. As pointed out in footnote 27 of the majority opinion, any development of the site was recognized long ago as a threat to the watershed lands. Of necessity, such development would be a threat to the watershed. One purpose of open space, as the majority recognizes, is to conserve natural resources. Water is a prime element of those resources. I also conclude that no change to the development plans, so long as the plans called for any development, could conserve that natural resource.

#### {Christian Activities Council v. Town Council -- DISSENT}

BERDON, J., dissenting. Today the majority rips the soul out of affordable housing in the state of Connecticut. By enacting the affordable housing land use appeals statute, General Statutes § 8-30g (affordable housing), the legislature sought to address a panoply of social ills.<sup>32</sup> First and foremost, the statute attempts to address the dire housing needs of low and moderate income citizens. See, e.g., *West Hartford Interfaith Coalition, Inc. v. Town Council*, 228 Conn. 498, 636 A.2d 1342 (1994). That said,

<sup>29</sup>The trial court concluded that the defendant's failure to include the word "clearly" in its reason did not undermine its compliance with the statutory requirement. The plaintiff does not challenge that conclusion on appeal.

<sup>30</sup>Although the compact was signed by representatives of twenty-nine municipalities, the record does not disclose how many of those municipalities ultimately approved the compact by ratifying their representatives' signatures. Glastonbury, however, did so.

<sup>31</sup>In the compact, "affordable housing" is defined "as units for which households pay not more than thirty percent of their gross annual income, where such income is less than or equal to 100 [percent] of the regional median income." It is not precisely clear how this definition fits with the statutory definition of "affordable housing" in § 8-30g (a) (1). Both the plaintiff and the defendant, however, have assumed in their briefs that the two definitions are essentially the same. For purposes of this issue, therefore, we assume without deciding that the two definitions share the same essential characteristics.

<sup>32</sup>Pursuant to General Statutes § 8-39a, "'affordable housing' means housing for which persons and families pay thirty per cent or less of their annual income, where such income is less than or equal to the area median income for the municipality in which such housing is located, as determined by the United States Department of Housing and Urban Development." See footnote 2 of the majority opinion for the full text of § 8-30g. As indicated in the majority opinion, there have been changes made to § 8-30g since 1994, the time of the present appeal. Because those changes are not relevant to the present case, references herein are to the current revision.

affordable housing is not just about providing shelter for the economically disadvantaged. It is also about cultivating racial and ethnic diversity in residential communities, just as *Sheff v. O'Neill*, 238 Conn. 1, 678 A.2d 1267 (1996), was about cultivating racial and ethnic diversity in our classrooms.<sup>33</sup> My colleagues in the majority seem to have set their sights on frustrating these equitable aspirations.

This case calls upon us to resolve the issue that lies at the heart of affordable housing in this state: what burden is a municipality required to satisfy before it may reject an affordable housing proposal? According to the majority, this burden is exceedingly deferential to the local zoning authorities whom § 8-30g was designed to keep in check. In my view, both the plain meaning of § 8-30g and the history surrounding its enactment supply irrefutable evidence that the legislature intended to impose upon towns a rigorous burden that resembles the gauntlet of strict scrutiny. If there were any doubt about this conclusion, "the mandate of liberal construction would be sufficient to dispel it." *In re Baby Z*, 247 Conn. 474, 551, 724 A.2d 1035 (1999) (*Berdon, J.*, dissenting); see *Kaufman v. Zoning Commission*, 232 Conn. 122, 140, 653 A.2d 798 (1995) ("[a]s a remedial statute, § 8-30g must be liberally construed in favor of those whom the legislature intended to benefit" [internal quotation marks omitted]).<sup>34</sup>

One preliminary matter must be noted. A town can easily avoid the mandate of § 8-30g entirely -- and thus revert to a traditional regime in which we must defer to its judgments -- once it has attained the following goal: 10 percent of its dwelling units are affordable for families with low or moderate incomes. See General Statutes § 8-30g (f). Because the town of Glastonbury falls far short of qualifying for this exemption (only 6 percent of its housing is affordable), the present appeal does not implicate this escape clause.

## I

In order to determine the burden that § 8-30g imposes upon a town before it may reject an affordable housing proposal, our fundamental objective is to evaluate the intent of the legislature. See, e.g., *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, 228 Conn. 507-508. "In seeking to discern [this legislative] intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Internal quotation marks omitted.) *Conway v. Wilton*, 238 Conn. 653, 663, 680 A.2d 242 (1996); accord *Kaufman v. Zoning Commission*, supra, 232 Conn. 133; *State v. Rado*, 14 Conn. App. 322, 329, 541 A.2d 124, cert. denied, 208 Conn. 813, 546 A.2d 282, cert. denied, 488 U.S. 927, 109 S. Ct. 311, 102 L. Ed. 2d 330 (1988) ("[i]t is axiomatic that courts are required to read a statute in light of its purpose"). I shall begin with a brief review of the legislative history surrounding the enactment of § 8-30g.

In 1987, the legislature established the Blue Ribbon Commission on Housing (Blue Ribbon Commission). Public Acts 1987, No. 87-550, § 4 (a). After conducting an intensive, two year study, the Blue Ribbon Commission released its "Report and Recommendations to the Governor and General Assembly, February 1, 1989" (Blue Ribbon Report). This report confirmed the worst fears about the magnitude of the housing crisis in our state.<sup>35</sup> Blue Ribbon Report, supra, pp. 7-10. The report also contained a comprehensive plan designed to address the crisis. *Id.*, p. 1. The legislature modeled the original affordable housing appeals act on this comprehensive plan.

Although the legislature had attempted to encourage affordable housing before it enacted § 8-30g, the Blue Ribbon Commission concluded that local zoning authorities under the prior regime were not sufficiently sensitive to the dire need for affordable housing -- at least not in their backyards. Blue Ribbon Report, supra, p. A-9. Accordingly, the Blue Ribbon Commission proposed a unique appeals process. In its most significant innovations, the Blue Ribbon Commission (1) proposed an appellate procedure that was much more efficient than garden-variety zoning appeals and (2) recommended displacing the traditional deferential standard of review with a rigorous burden of proof that would preclude a town from rejecting an affordable housing proposal unless it could marshal exceedingly persuasive reasons. *Id.*, pp. A-6 through A-9. The legislature put the force of our law behind these recommendations.<sup>36</sup> By so doing, the legislature recognized the desperate need for affordable housing and demonstrated its robust commitment to addressing this need. See, e.g., *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, 228 Conn. 511 ("the key purpose of § 8-30g is to encourage and facilitate the much needed development of affordable housing throughout the state"). In contrast to garden-variety appeals from ordinary zoning decisions -- in which the standard of review is highly deferential<sup>37</sup> -- the legislature clearly intended to forbid a town from rejecting a proposal for affordable housing unless it could prove that its decision satisfied the rigorous criteria set forth in § 8-30g (c).<sup>38</sup>

The legislature did not create this new burden by accident. The forceful opposition from certain members of the legislature rules out the possibility that any legislator failed to appreciate the profound consequences that would follow in the wake of the new law. Representative Robert M. Ward stated: "I don't see this just as a shifting of the burden. I see it really as throwing out the basic concept of zoning altogether." 32 H.R. Proc., Pt. 30, 1989 Sess., p. 10,651. Representative Oskar G. Rogg remarked that, under traditional zoning law, "as long as you acted reasonably . . . you won because . . . the applicant had to prove you were unreasonable . . . Here we are reversing this whole process." *Id.*, pp. 10,666-67. Senator Fred H. Lovegrove commented that, "[a]s I read this it seems to me that when a claim is filed against a municipality that they are considered guilty until they prove their innocence. I wondered why the bill wasn't written so that the burden of proof of abuse was on the developer, instead of the town having to prove they didn't abuse [their power]." 32 S. Proc., Pt. 12, 1989 Sess., p. 4052.

The Blue Ribbon Report -- which we may presume received the careful consideration of every legislator -- stated that the Blue Ribbon Commission was "sensitive to the strongly expressed concern of municipalities that they might lose control over the pace and direction of land development in their communities. Nonetheless, and despite lengthy discussions, the [Blue Ribbon Commission] was unable to develop any other proposal [aside from the special appeals procedure] that would ensure sufficient consideration is given to the affordable housing needs of those not already adequately housed in the municipality. [The Blue Ribbon Commission] strongly felt . . . that if municipalities do not give greater weight to the need for creation of affordable housing when evaluating development proposals, we will have business as usual: the housing crisis will not go away." Blue Ribbon Report, supra, p. A-9; see also *Town Close Associates v. Planning & Zoning Commission*, 42 Conn. App. 94, 104, 679 A.2d 378, cert. denied, 239 Conn. 914, 682 A.2d 1014 (1996).

A proponent of the bill, Representative Miles S. Rapoport underscored this sentiment, remarking that "[t]he primary conclusion of the Blue Ribbon Commission was that . . . the single largest obstacle to the building and creation of affordable housing . . . was the availability of affordable land and overcoming the resistance of communities who do not want to have affordable housing in those towns. . . . [I]f we're going to reject this amendment . . . we might as well say to ourselves . . . that [a community's right to decide] what kind of housing [it will have] far overshadows in our view the . . . amply demonstrated crisis -- and I do believe it's a crisis -- that we have in this state for affordable housing . . ." 32 H.R. Proc., supra, pp. 10,672-75.

This legislative history thus establishes with unmistakable clarity the fact that the legislature intended § 8-30g to create a major shift away from traditional zoning law. See, e.g., *Town Close Associates v. Planning & Zoning Commission*, supra, 42 Conn. App. 104. As the Appellate Court observed several years ago, "[t]raditional land use policies did not solve Connecticut's affordable housing problem, and the legislature passed § 8-30g to effect a change." *Wisniewski v. Planning Commission*, 37 Conn. App. 303, 317, 655 A.2d 1146, cert. denied, 233 Conn. 909, 658 A.2d 981 (1995). It is against this backdrop that we must interpret the requirements imposed by § 8-30g.

## II

Pursuant to § 8-30g (c) (1), a town may not reject an affordable housing proposal unless, on appeal, it can sustain the burden of proving each of the following four elements: "(A) the decision from which such appeal is taken and the reasons cited for such decision are supported by *sufficient evidence* in the record; (B) the decision is *necessary* to protect *substantial public interests* in health, safety, or other matters which the commission may legally consider; (C) such public interests *clearly outweigh* the need for affordable housing; and (D) such public interests *cannot be protected* by reasonable changes to the affordable housing development . . ." (Emphasis added.) As the

<sup>33</sup>See footnote 4 of this dissent for an illustrative list of other social ills caused by the scarcity of affordable housing.

<sup>34</sup>In an attempt to camouflage the fact that they have dismantled affordable housing, my colleagues in the majority emphasize insignificant differences between affordable housing land use appeals and traditional zoning appeals. This is the judicial equivalent of smoke and mirrors: if the legislature had not intended to establish a uniquely rigorous standard of appellate review to govern affordable housing appeals, it would have had no reason to enact § 8-30g.

<sup>35</sup>In some towns, the scarcity of affordable housing means that educators, firefighters and other public servants are unable to afford to live in the communities that they serve. See 32 H.R. Proc., Pt. 30, 1989 Sess., p. 10,664, remarks of Representative Oskar G. Rogg. Similarly, the shortage of affordable housing deprives many citizens of the opportunity to remain in their home towns, where they had hoped to live out their entire lives. The affordable housing crisis also threatens the state's economic prosperity, because Connecticut corporations have a difficult time recruiting employees. Blue Ribbon Report, supra, p. 15. Finally, the lack of affordable housing contributes to de facto segregation along the vectors of both race and ethnicity. *Id.*, p. 6.

<sup>36</sup>More specifically, the legislature (1) created an expedited appeals process and (2) established several criteria that zoning authorities must consider when evaluating affordable housing applications. General Statutes § 8-30g (b). As discussed previously, this process does not apply to towns that have devoted at least 10 percent of their housing units to affordable housing. See General Statutes § 8-30g (f).

<sup>37</sup>Traditionally, a decision by a zoning authority "must be upheld by the trial court if [it is] reasonably supported by the record" and if the zoning authority has not acted arbitrarily, illegally, or in abuse of its discretion. *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission*, 220 Conn. 527, 542-43, 600 A.2d 757 (1991).

<sup>38</sup>See part II of this dissent.

emphasized language makes clear, this standard establishes a new burden that is far more rigorous than the deferential review afforded to garden-variety zoning appeals.<sup>39</sup> From nothing more than the text of § 8-30g, it is thus apparent that affordable housing appeals are worlds apart from garden-variety zoning appeals.<sup>40</sup> See, e.g., *Kaufman v. Zoning Commission*, supra, 232 Conn. 150. I consider each subsection *seriatim*.

#### A

I begin with the plain language of § 8-30g (c) (1) (A): "the decision from which [an] appeal is taken and the reasons cited for such decision [must be] supported by sufficient evidence in the record . . . ."

We presume that the drafters of statutes are familiar with the legal definitions of the statutory terms that they decide to utilize. Black's Law Dictionary (6th Ed. 1990) defines "sufficient evidence" as "[a]dequate evidence; such evidence, in character, weight, or amount, as will legally justify the judicial or official action . . . evidence . . . which is satisfactory for the purpose; that amount of proof which ordinarily satisfies an unprejudiced mind, beyond a reasonable doubt. . . ." Instead of deferring to the majoritarian biases of zoning commissions, judges with "unprejudiced minds" must independently conclude that sufficient evidence exists. In the course of this inquiry, courts must reject evidence as insufficient unless it supplies "[legal] justification] . . . beyond a reasonable doubt."<sup>41</sup> *Id.*

As the amicus cogently points out, the sufficient evidence standard "requires some objective verification or support beyond the mere belief of a commission. This reflects a fundamental concern of the Blue Ribbon Commission . . . that [i]t appears that many times the local commissions decisions elevate vaguely-stated and relatively unimportant concerns over the important need to build affordable housing."<sup>42</sup> (Internal quotation marks omitted.)

By employing the standard of "sufficient evidence," the legislature thus clearly and unambiguously directed courts to carefully scrutinize a zoning authority's decision to deny an application for affordable housing. It is well settled that, "[w]here the language of the statute is clear and unambiguous, we have refused to speculate as to the legislative intention, because it is assumed that the words express the intention of the legislature. *Hayes v. Smith*, 194 Conn. 52, 58, 480 A.2d 425 (1984); *Deleiveuse v. Manson*, 184 Conn. 434, 438-39, 439 A.2d 1055 (1981); *Mazur v. Blum*, 184 Conn. 116, 118-19, 441 A.2d 65 (1981)." *Stutton v. Lopes*, 201 Conn. 115, 118-19, 513 A.2d 139, cert. denied, 479 U.S. 964, 107 S. Ct. 466, 93 L. Ed. 2d 410 (1986); accord *Mattatuck Museum-Mattatuck Historical Society v. Administrator, Unemployment Compensation Act*, 238 Conn. 273, 279, 679 A.2d 347 (1996) ("[w]hen the language is plain and unambiguous, we need look no further than the words themselves because we assume that the language expresses the legislature's intent" [internal quotation marks omitted]); *State v. Luczetti*, 230 Conn. 427, 433, 646 A.2d 85 (1994) ("[i]t is axiomatic that, where the statutory language is clear and unambiguous, construction of the statute by reference to its history and purpose is unnecessary"); *Nichols v. Warren*, 209 Conn. 191, 196, 550 A.2d 309 (1988) ("When the statutory language is clear and unambiguous, it is from that source that we deduce the intent of the legislature. *Commissioner v. Freedom of Information Commission*, 204 Conn. 609, 620, 529 A.2d 692 (1987); *Rhodes v. Hartford*, 201 Conn. 89, 93, 513 A.2d 124 (1986); *Johnson v. Manson*, 196 Conn. 309, 316, 493 A.2d 846 (1985), cert. denied, 474 U.S. 1063, 106 S. Ct. 813, 88 L. Ed. 2d 787, reh. denied, 475 U.S. 1061, 106 S. Ct. 1290, 89 L. Ed. 2d 597 (1986); 2A J. Sutherland, [Statutory Construction (4th Ed. Sands 1984)] § 48.01.").

Nevertheless, in response to the majority's reliance upon legislative history, I wish to point out that my interpretation of § 8-30g (c) (1) (A) comports with the legislative intention to combat the majoritarian biases of local zoning authorities. Moreover, my interpretation of sufficient evidence is further reinforced by additional legislative history. The Blue Ribbon Commission recommended that the denial of an affordable housing application must be reversed unless the zoning authority proffers reasons that are (1) "bona fide," (2) "legitimate" and (3) "directly and substantially [necessary to] protect public health and safety concerns that are significantly more important than the need for affordable housing . . . ." Blue Ribbon Report, supra, p. A-7. During the debate on the floor of the House, Representative Richard D. Tulisano, a proponent of the bill, was asked to clarify the sufficient evidence standard. Representative Dale W. Radcliffe asked Representative Tulisano to "give me an idea what sufficient evidence is. Is that a particular test? Has that been developed? Is there any precedent as to what sufficient evidence is?" 32 H.R. Proc., supra, p. 10,578. After Representative Radcliffe explained that he was familiar with the "fair preponderance," "clear and convincing" and "beyond a reasonable doubt" standards; *id.*; Representative Tulisano responded that the sufficient evidence standard "is none of the three . . . ." *Id.*, p. 10,579. Instead, Representative Tulisano stated that sufficient evidence "is in fact a new system we're developing here today. . . . [C]ourt decisions have in fact left it to . . . the Boards of Planning and Zoning Commissions to reach these conclusions and particularly with evidence of -- I'm trying to think of the word, belief, rather than any hard evidence and I think that *they will have to have something on the record that third parties can look at in an objective manner and reach the same conclusion.*"<sup>43</sup> (Emphasis added.) *Id.*

If the legislature had intended to insulate denials of affordable housing proposals with the deferential standard of review that we employ in garden-variety zoning appeals, it knew very well how to do so. Instead of incorporating the traditional "abuse of discretion" standard, the legislature invoked the more rigorous criterion of sufficient evidence. *Steelcase, Inc. v. Crystal*, 238 Conn. 571, 586, 680 A.2d 289 (1996) (legislature deemed to be aware of settled meanings of terms in related areas of law when it enacts statute).

In short, the plain language of § 8-30g (c) (1) (A) and its legislative history supply ironclad evidence of the legislative intention to create a standard of review that requires zoning authorities to satisfy a high burden of persuasion before they may deny affordable housing proposals. In garden-variety zoning appeals, decisions by a zoning authority "must be upheld by the trial court if they are reasonably supported by the record" and if the zoning authority has not acted arbitrarily, illegally, or in abuse of its discretion. *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission*, 220 Conn. 527, 542-43, 600 A.2d 757 (1991). When affordable housing is at stake, however, the record must contain "sufficient evidence," *i.e.*, a sufficient quantum of evidence to persuade the unprejudiced minds of the trial court and the appellate courts that -- from an objective standpoint -- the reasons that the zoning authority has set forth rise to the level of legal justification beyond a reasonable doubt. See Black's Law Dictionary (6th Ed. 1990).

#### B

Section 8-30g (c) (1) (B) requires a zoning authority to prove -- based upon "sufficient evidence" in the record -- that its reasons for denying an affordable housing application are "necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider . . . ." We therefore must reverse the denial of an affordable housing proposal if the zoning authority has failed to sustain its burden of proving by sufficient evidence two independent facts: (1) the public interest allegedly at stake is "substantial" and (2) there is a "necessary" nexus between the denial of the proposal and this substantial public interest. The plain meaning of the word "substantial" compels the conclusion that a proposal cannot be denied unless it represents a strong likelihood of significant harm to "health, safety, or other matters which the commission may legally consider . . . ."<sup>44</sup> General Statutes § 8-30g (c) (1) (B). Accordingly, the zoning authority must prove by sufficient evidence two independent facts: (1) the affordable housing proposal threatens a serious probability of grave harm to an interest that the commission may legally consider; and (2) denial is necessary to avert this harm.

#### C

<sup>39</sup>According to § 8-30g (c), "the *burden* shall be on the [zoning authority] to *prove*" the various matters set forth in subdivision (1) (A) through (D). (Emphasis added.) I am unable to comprehend the majority's claim that the emphasized words represent "linguistic inaccuracy." These are common, everyday words in the lexicon of every legislator, and the majority has supplied no reason to believe that even one legislator misunderstood their common, everyday meanings. Although I can understand why the majority is not pleased with this statutory language, this displeasure does not confer upon my colleagues the power to excise a sentence from the General Statutes.

<sup>40</sup>See footnote 6 of this dissent.

<sup>41</sup>To the extent that this court appeared to endorse a less rigorous standard in either *West Hartford Interfaith Coalition, Inc.*, or *Kaufman*, we should disavow such an ill-advised interpretation of the statutory language and the legislative history. Although I joined the majority opinions in *West Hartford Interfaith Coalition, Inc.*, and *Kaufman*, I never intended to endorse the interpretation of § 8-30g contained in the majority opinion in the present case. To the extent that I did so inadvertently, I acknowledge that it was an error. I wish that my colleagues in the majority shared my willingness to admit past mistakes in the interest of serving justice, instead of grappling themselves with hoops of steel to a jurisprudence that undermines the remedial purposes of affordable housing.

<sup>42</sup>One of the authors of the amicus brief was the cochair of the Land Use Subcommittee of the Blue Ribbon Commission.

<sup>43</sup>The majority correctly observes that Representative Tulisano also remarked that sufficient evidence "is not a very high standard whatsoever . . . ." (Internal quotation marks omitted.) In my view, it would be a grave error to rip this comment from its context and regard it -- in isolation -- as definitive. Instead, this remark must be viewed in the context of the other statements that Representative Tulisano and other legislators made on the floor of the House of Representatives. It also must be read alongside the Blue Ribbon Report, which it flatly contradicts.

<sup>44</sup>It is apparent that a proffered justification cannot reasonably be deemed "substantial" if it presents no reasonable probability of any harm; a serious probability of minor harm; or a small probability of grave harm. See, e.g., *Kaufman v. Zoning Commission*, supra, 232 Conn. 156 (explaining that § 8-30g prohibits zoning authority from rejecting affordable housing application based upon "mere possibility" of harm).

Section 8-30g (c) (1) (C) builds upon subparagraphs (A) and (B). Once a zoning authority has established that it could not avert a serious probability of grave harm to substantial public interests without denying an affordable housing proposal, the zoning authority must go on to prove that these "public interests clearly outweigh the need for affordable housing . . ."<sup>45</sup> General Statutes § 8-30g (c) (1) (C).

In determining precisely what is required under § 8-30g (c) (1) (C), we should begin with the pivotal piece of statutory language. According to Black's Law Dictionary (6th Ed. 1990), the term of art "clearly" is synonymous with the word "[u]nequivocal." Accordingly, subparagraph (C) requires that the public interests referred to in subparagraph (B) must unequivocally outweigh the need for affordable housing. It is apparent that this standard demands an exceedingly rigorous level of proof.

Before today, we had not yet decided the scope of the inquiry into the need for affordable housing. In other words, we had not previously determined whether we should evaluate the need for affordable housing by focusing at the statewide level, the regional level, or the local level. Today, the majority holds that "the need for affordable housing is to be addressed on a local basis." I believe that this holding is dangerously incorrect, and that it undermines the beneficial purposes of § 8-30g.

In *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, 228 Conn. 511, we noted that a local focus -- as opposed to a statewide or regional focus -- would threaten the development of affordable housing in wealthier towns. Because they have few low income residents, such towns could claim that they have no (local) need for affordable housing. For this reason, the need for affordable housing cannot be evaluated strictly in terms of a town's current population. As I discussed previously, § 8-30g was designed to address the following problems: (1) public servants are unable to afford to live in the communities that they serve; (2) Connecticut corporations have a difficult time recruiting employees; and (3) the lack of affordable housing contributes to de facto segregation along the vectors of both race and ethnicity. See footnote 4 of this dissent. Thus, an intelligent assessment of the need for affordable housing must take into account the needs of nonresidents who might decide to live in a town if affordable housing were available.<sup>46</sup> The contrary result would permit affluent towns such as West Hartford, Glastonbury and Greenwich to keep the poor corralled in ghettos in Hartford, New Haven and Waterbury.

#### D

Provided that sufficient evidence demonstrates (1) that denial of an affordable housing application was necessary to avert a serious probability of grave harm to substantial public interests and (2) that these interests unequivocally outweigh the need for affordable housing, the zoning authority must clear one final hurdle: it must demonstrate that "such public interests cannot be protected by reasonable changes to the affordable housing development . . ." General Statutes § 8-30g (c) (1) (D). The majority has tacitly modeled its interpretation of this final prong of § 8-30g on the analytic framework set forth in *Huntington Branch, National Association for the Advancement of Colored People v. Huntington*, 844 F.2d 926 (2d Cir.), aff'd, 488 U.S. 15, 109 S. Ct. 276, 102 L. Ed. 2d 180 (1988). I join my colleagues in adopting this well reasoned authority from the Second Circuit Court of Appeals, upon which the Blue Ribbon Commission placed heavy reliance.

In *Huntington*, the court distinguished between "plan-specific" and "site-specific" reasons for denying an affordable housing application. Id., 939. Plan-specific problems may be eliminated by "requiring reasonable design modifications." Id. Site-specific problems, in contrast, can only be avoided by denying the application. Id. Applying this approach to § 8-30g, the zoning authority must approve an application for affordable housing unless it can advance site-specific reasons for its refusal to do so. In other words, denying the application for affordable housing must be the only way to avert a serious probability of grave harm to substantial public interests that are so important they unequivocally outweigh the need for affordable housing.

#### III

I now apply the four part test set forth in § 8-30g (c) (1) to the evidence in the record. In my view, the trial court abused its discretion by concluding that the defendant satisfied its heavy burden with nothing more than the highly speculative assertion that "the proposed development *could* endanger a *potential future* water supply source . . ." (Emphasis added.)

The named defendant, the town council of the town of Glastonbury (defendant), relied upon the following evidence to justify its decision to deny the application for the development of affordable housing: (1) a report by the Environmental Planning Services prepared in 1991 contained two sentences referring to the fact that the 578 acre tract owned by the Metropolitan District Commission (Metropolitan) -- which included the thirty-three acre parcel at issue in the present case (parcel) -- was "underlain by coarse-grained stratified drift with a saturated thickness . . . typically capable of yielding high quantities of ground water to properly developed wells and may be considered potential public water supply aquifers"; (2) a similar resolution was submitted by the defendant's conservation committee; (3) expert witness Sarah Trombetta, a senior consulting hydrogeologist, testified that the plaintiff's expert had not definitively established that the subject property could not be used for a water supply; (4) Trombetta submitted a report to the defendant stating that the parcel *might* support a community-sized water supply system of a sort already in use in Glastonbury; and (5) other experts testified that the development of the parcel would preclude its use at any future time as a water supply source.

At the hearing before the defendant, the plaintiff offered the testimony of an expert witness, Jeffrey Heidtman, who is the senior vice president and chief hydrogeologist of Fuss and O'Neill, an engineering consulting firm. Based upon extensive tests that he performed on or near the parcel, Heidtman testified: (1) that the affordable housing proposal would have only a negligible impact on ground and surface water in the area; and (2) that no portion of the parcel was capable of supporting a significant ground water supply source. The plaintiff also introduced the results of a study performed by the engineering firm of Geraghty and Miller in 1966, which revealed that no land within 2000 feet of the parcel was suitable for groundwater exploration. Furthermore, the plaintiff produced evidence demonstrating that the defendant had stopped using the parcel as a public water source in 1953, because of its limited potential for supplying water in the future. Finally, the plaintiff adduced evidence that, more than forty years ago, the state department of public health designated the parcel as nonwatershed land.

The trial court determined: (1) that there was "sufficient evidence in the record" to support the defendant's conclusion that "the proposed development could endanger a potential future water supply source"; (2) that the application had to be denied in order to avert a serious probability of grave harm to "a substantial public interest in health, safety or other matters"; and (3) that "loss of a potential public water supply is both a site-specific issue and one which is implicated by [the proposed] development with or without reasonable changes." In my view, the evidence that the defendant relied upon falls far short of satisfying the sufficient evidence standard contained in § 8-30g (c) (1) (A). Moreover, this evidence does not demonstrate that denial of the application was necessary to avert a serious probability of grave harm to substantial public interests pursuant to § 8-30g (c) (1) (B). Accordingly, I believe that the trial court abused its discretion by affirming the defendant's denial of the affordable housing proposal.

To begin with, the evidence that the defendant relied upon is highly speculative. As in *Kaufman*, the record suggests only a mere possibility that the purported "substantial public interests" rises to the statutory level of proof by sufficient evidence -- i.e., "that amount of proof which ordinarily satisfies an unprejudiced mind, beyond a reasonable doubt." Black's Law Dictionary (6th Ed. 1990). Indeed, it even fails under the majority's watered-down definition of sufficient evidence.

Trombetta -- the only witness whose testimony supported the defendant's decision -- made two fatal concessions: (1) there was insufficient evidence to determine whether the parcel could be used as a ground or surface water supply; and (2) development of the parcel "would likely have a limited or minimal impact on a ground water supply in the area . . ." In light of these concessions, the trial court could not reasonably have determined that the defendant's explanation that the parcel was the site of a potential public water source was "legally justified] . . . beyond a reasonable doubt."

In addition, the evidence in the record does not demonstrate that denial of the application was necessary to avert a serious probability of grave harm to the town's water supply. The defendant did not adduce any evidence with respect to the likelihood that the proposed development would cause any harm whatsoever, let alone substantial harm. The defendant merely asserted that it denied the application because development of the parcel "could endanger a *potential future* water supply source . . ." (Emphasis added.) As a matter of law, this sort of unsubstantiated speculation cannot satisfy § 8-30g (c) (1) (B). Even if it were true that the proposed development *could* endanger a *potential* source of water in the *future*, this is a far cry from the requisite showing that denial of the application is *necessary*.

Because the defendant failed to satisfy the threshold test of marshaling sufficient evidence to prove that it had to deny the proposal in order to avert a serious probability of grave harm to substantial public interests, my inquiry under § 8-30g has come to an end. The defendant's decision to deny the application in order to avoid theoretical and highly speculative problems with the future water supply must be reversed.

#### IV

The majority claims that "[a] zone change must be sustained if even one of the stated reasons is sufficient to support it."<sup>47</sup> (Internal quotation marks omitted.) If we were deciding an ordinary, garden-variety zoning appeal, I would agree. In the context of affordable housing applications, however, the majority is simply wrong.

<sup>45</sup>As the majority acknowledges, the named defendant in the present case, the town council of the town of Glastonbury (defendant), "fail[ed] to include the word 'clearly'" in its articulation of its reasons for denying the plaintiff's affordable housing proposal. Instead, the defendant simply asserted that various "considerations outweigh[ed] the need for affordable housing . . ." Accordingly, the defendant did not even ask the right question, let alone provide a satisfactory answer to it.

<sup>46</sup>Nevertheless, I wish to reiterate that a town may opt out of the requirements of § 8-30g by setting aside 10 percent of its housing and ensuring that it is affordable. See General Statutes § 8-30g (f).

<sup>47</sup>The majority extracts this sentence from *West Hartford Interfaith Coalition, Inc. v. Town Council*, supra, 228 Conn. 513. What the majority neglects to mention is that this language (1) is quoted directly from a garden-variety zoning case (*Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning &*

The statutory language precludes the majority's argument. Section 8-30g (c) (1) requires a town to demonstrate that its "decision is necessary to protect substantial public interests" -- plural -- that "clearly outweigh the need for affordable housing . . ." (Emphasis added.) This language demands a totality of the circumstances balancing test, in which the aggregate heft of multiple public interests must "clearly outweigh" the need for affordable housing. For example, we will assume for the sake of argument that a town determined that the sum of two reasons "clearly outweighed" the need for affordable housing. If the reviewing court determined that one of these reasons did not satisfy the statutory criteria, then it would be senseless for the trial court to go on to review the town's conclusion that the sum of the valid and the invalid reasons clearly outweighed the need for affordable housing. The zoning authority very well may have come to its conclusion based upon the totality of a laundry list of reasons.

Moreover, a reviewing court generally cannot determine whether reliance upon a single invalid reason has tainted the entire decision to deny an affordable housing proposal. Ordinarily, the members of a zoning authority premise their ruling on a number of reasons that they consider in the aggregate; they do not articulate the extent to which they rely on any particular reason.<sup>48</sup> If one of these reasons is invalid, then we must reverse, for the simple reason that every member of the zoning authority may have deemed the invalid reason both sufficient and dispositive. In other words, it is possible that -- but for the invalid reason -- the zoning authority would have approved the application for affordable housing. The presence of other valid reasons does not diminish this possibility.<sup>49</sup>

V

In part III of this dissent, I concluded that the defendant's highly speculative assertion that "the proposed development *could* endanger a *potential future* water supply source" does not satisfy the requirements of § 8-30g. As discussed in part IV of this dissent, this conclusion compels us to reverse the defendant's decision to deny the affordable housing application. Although I believe that no further analysis is required, I will nevertheless briefly respond to the majority's contrary opinion by demonstrating that not one of the defendant's remaining reasons passes muster.

A

Aside from speculative theorizing about potential future water sources, the defendant asserted that the proposed development would increase traffic-related dangers. More specifically, the defendant stated that "[t]he proposed development would create a new road exiting onto an already acknowledged dangerous curve on Hebron Avenue just west of its intersection with Keeney Street [intersection] in an area of high risk, serious traffic accidents and high traffic volume. The proposed development would increase . . . traffic hazards [and] would expose residents of the proposed development . . . to unreasonable risks." In order to support this statement, the defendant relied upon generalizations and anecdotal evidence, none of which empirically documented the effect that the development would have on the intersection.<sup>50</sup>

A traffic analysis conducted by the plaintiff's expert witness, Luchs Associates, a professional engineering group, demonstrated that the proposed development would not adversely affect the volume of traffic at the intersection. In fact, these engineers concluded that the development would have no more than a negligible impact on the intersection. Another of the plaintiff's experts, Frederick Hesketh, a licensed engineer from F. A. Hesketh and Associates, concurred with this conclusion. Hesketh testified that approximately 5070 automobiles passed through the intersection every day. According to Hesketh, the proposed development would generate only 160 additional trips per day.

In light of this record evidence, it is apparent that the defendant's concerns about traffic fail to satisfy § 8-30g (c) (1) (C). In my view, it is perfectly obvious that the addition of 160 trips per day to an intersection that already averages over 5000 trips per day -- a scant 3.2 percent increase -- does not unequivocally outweigh the critical need for affordable housing.

B

The defendant next cited evidence of the desirability of "provid[ing] open space in order to meet local and regional needs."<sup>51</sup> This reason is pitifully inadequate. In essence, the defendant concluded that its interest in providing open space trumped the need to provide affordable housing. It could not be more obvious to me that the desirability of ample open space -- which implicates interests that are purely aesthetic and recreational -- cannot possibly clearly outweigh (1) the basic human need for shelter and (2) the fundamental importance of racial and ethnic diversity. Even if I were mistaken, however, the defendant has failed to demonstrate that denial of the plaintiff's proposal is necessary to supply adequate open space.

Even if we were to assume for the sake of argument that the defendant's desire for open space rises to the level of a "substantial interest" within the meaning of § 8-30g (c) (1) (B), it is apparent that denial of the plaintiff's application is not "necessary to protect" this interest. The defendant has made no showing that development of the thirty-three acre parcel is likely to harm the defendant's ability to obtain adequate open space elsewhere. In addition, the plaintiff offered evidence demonstrating that residential development of the parcel pursuant to the plaintiff's proposal would in fact comport with the town plan, which identifies the thirty-three acre parcel as "fringe suburban." This means that it may be developed at a density of one dwelling unit per acre, which is precisely what the plaintiff's proposal sought to do.

The evidence relied upon by the defendant does not cast any doubt upon the conclusion that the town can accomplish its goal of providing ample open space without acquiring any of Metropolitan's holdings, let alone the thirty-three acre parcel at issue in this case. At best, the evidence merely indicates that the defendant had in the past considered acquiring some of the land owned by Metropolitan for open space. There is no reason to believe that development of the parcel -- a noncontiguous, thirty-three acre portion of the 578 acres held by Metropolitan -- would have jeopardized the defendant's ability to acquire sufficient land (including some portion of the remaining 545 acres held by Metropolitan) for use as open space.

Emphasizing that the parcel is "particularly appropriate for open space," the majority states that "other sites in town . . . were suitable for affordable housing . . . [and that] the plaintiff makes no claim that there are no other sites in the town that are suitable for affordable housing development." This analysis has nothing at all to do with the inquiry that is prescribed in § 8-30g. To begin with, the possibility that the parcel is "particularly appropriate" for use as open space has nothing to do with the importance of devoting the parcel to aesthetic and recreational enjoyment, as opposed to affordable housing. Accordingly, this factor is irrelevant.<sup>52</sup>

Moreover, there is nothing in the text of § 8-30g suggesting that the plaintiff must bear the burden of proving that the parcel is the only possible location in town where affordable housing could be situated. Instead, the legislature placed all of the relevant burdens on the shoulders of the zoning authority, which failed to demonstrate that

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*Zoning Commission*, supra, 220 Conn. 544) and (2) has absolutely nothing to do with either § 8-30g in general or the holding of *West Hartford Interfaith Coalition, Inc.*, in particular.

<sup>48</sup>In the present case, the members of the town council did not articulate the extent to which they relied on any of the various reasons that they advanced in support of their decision to deny the affordable housing proposal.

<sup>49</sup>Assume for the sake of argument that one alternative reason satisfied the requirements of § 8-30g. This determination would not enable us to resolve the purely factual question of whether the zoning authority deemed that reason sufficient -- in and of itself, wholly apart from any invalid reasons -- to deny an affordable housing application. Notwithstanding the presence of at least one valid reason, it is apparent that a town nevertheless may have denied an application for affordable housing based upon nothing more than a single invalid reason. Accordingly, we must reverse a denial of an affordable housing application if we determine that even one of the proffered reasons is invalid.

<sup>50</sup>More specifically, the defendant heard testimony indicating that drivers experienced lengthy delays at the intersection, which is an area marked by significant traffic and a large number of accidents. An attorney who had represented zoning authorities in the past testified that he could not recall an approval of a new subdivision near any area that resembled the intersection. Furthermore, individual council members who had driven through the intersection stated that the development would make a bad intersection even worse.

<sup>51</sup>More specifically, the 1994 Town Plan of Development suggested that the defendant consider purchasing part of Metropolitan's land for preservation as open space. In addition, there was evidence indicating that the defendant has for quite some time viewed all of Metropolitan's property as a valuable site for open space and recreation.

<sup>52</sup>While the majority is correct "that granting the plaintiff's application would have excised [the] parcel from the remaining acres of Metropolitan's land, and effectively would have eliminated its use for open space, conservation and recreation," I fail to see what this observation has to do with § 8-30g. Every affordable housing development entails certain opportunity costs. This is so for the simple reason that the same spot cannot be occupied simultaneously by both an affordable housing development and, for example, a drive-in movie theater. As this hypothetical demonstrates, however, the fact that an opportunity cost exists does not mean that the need for affordable housing is necessarily clearly outweighed.

In a similar vein, the majority asserts in the final sentence of its opinion that the zoning authority properly determined "that a 33.42 acre, twenty-eight unit residential subdivision, bisected by thirteen acres of open space, simply is not the same thing as 33.42 acres of open space." This is undeniably true, but it has nothing to do with the requirements imposed on the zoning authority by § 8-30g.

there were no other sites in town that were suitable for use as open space.<sup>53</sup> It is perfectly clear to me that it is this latter issue that lies at the heart of the proper determination of whether the desirability of open space clearly outweighs the need for affordable housing. Nevertheless, the majority refuses to consider it.

For these reasons, the defendant's decision to deny the plaintiff's proposal for affordable housing violates § 8-30g (c) (1) (B) and (C).

C

Finally, the defendant claimed that, because Metropolitan holds the parcel in public trust, an affordable housing proposal should not be considered until a comprehensive plan has been completed that accounts for all of Metropolitan's holdings. The defendant has declined to pursue this argument on appeal, and for good reason: it is apparent that Metropolitan has the authority to sell the parcel to the defendant.

VI

By equating affordable housing appeals with garden-variety zoning appeals, the majority today undermines the statutory promise of affordable housing. In the process, the majority disregards: (1) the plain meaning of the statutory language; (2) clear expressions of legislative intent; and (3) the mandate that we must liberally construe statutes like § 8-30g if such a construction is necessary to fulfill the legislature's broad remedial goals. It would appear that the vocal minority of legislators who feared that § 8-30g would "[throw] out the basic concept of zoning altogether"; 32 H.R. Proc., supra, p. 10,651, remarks of Representative Ward; had nothing to worry about. The majority of this court, sitting as a superlegislature, has overruled the work of the elected representatives of the people. The majority has effectively unraveled the tapestry of shelter provided by affordable housing.

In my view, we should remand this appeal to the defendant with direction to grant the plaintiff's application for affordable housing. Accordingly, I dissent.

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<sup>53</sup>In addition to finding no support in the text of § 8-30g, the regime posited by the majority makes no sense. It is exceedingly unlikely that any developer could ever prove that a given piece of land is the only place in town where affordable housing could be built. Under the majority's view, therefore, the zoning authority could always reject an affordable housing proposal by pointing to an available piece of property someplace else.