Affordable Housing in Connecticut

Challenges, Myths and Recommendations to the 2025 General Assembly

A 5-Part Series

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Part 1:

Affordable Housing Challenges, Myths, and Proposals for the 2025 CT Legislative Session

In 2021, as increases in housing prices and rents caused by the pandemic and inflation coincided with a renewed focus on racial and economic injustice, the Connecticut General Assembly passed its first significant affordable housing legislation since 1989. The 2021 law cut back on some aspects of local control of housing through zoning by mandating a new set of best practices, prohibiting several tools of exclusion, and establishing new aspirations.

Since then, however, reform has mainly stalled, even as rents and prices have continued to escalate. Meanwhile, some legislators have pushed back on the 2021 changes, vowing to protect "local choice" in land use regulation from further restriction.

As we head toward the 2025 legislative session, we remain in the throes of an affordable housing crisis. The data from one recent study are startling: the median price of a home in our state rose from $271,000 in 2019 to $389,300 in 2023, and the median rent increased from $1,440 in 2014 to $1,710 in 2023, with greater increases in many locations. To bring down housing costs, in addition to our 1.3 million existing residential units, we need an estimated 90,000 to 170,000 new or rehabilitated places for low and moderate-income households to live.

This article, the first of five, seeks to assist the 2025 discussion by starting with a step back and summarizing why affordable housing reform in Connecticut is so challenging. In pieces following over the next four days, I will address myths and misconceptions that impede discussions; environmental and financial considerations that compete with housing goals; "low-hanging fruit," meaning reforms that should be easier to implement because they would merely extend existing law while preserving local choice; and "reaching goals," reforms that could change the game if we can muster the political will to embrace redirection instead of tinkering.

I write based on my experience: 42 years as a land use and environmental lawyer, immersed regularly in affordable housing matters. In 1988, I handled a case in the Connecticut Supreme Court that outlawed minimum floor area requirements (in that case, a 1,200 square foot minimum for a single-family home) unrelated to the number of occupants. The court held that such rules serve no proper purpose of zoning, and are illegal economic segregation.

That case got the attention of a Blue Ribbon Commission on Affordable Housing, which right at that time (1988-89) was considering how our state should respond to the rapid escalation of housing costs in the 1980s and the fact that local zoning commissions, while regularly approving

single-family homes on large lots, were routinely denying multi-family and affordable housing proposals, with the courts upholding local discretion. I was asked to take on a scrivener's role in assisting that commission with drafting parts of what became General Statutes § 8-30g, our affordable housing statute. Since 1990, I have handled scores of affordable housing applications, and advised municipal and state officials, town planners, land use commissioners, and builders and developers about regulation, permitting, and compliance.

Most recently, in 2022-2023, I co-chaired a state-level working group that reviewed and assessed our existing zoning laws as they impact affordable housing, focusing on best and worst practices. Our work included evaluating affordable housing plans that each of our 169 towns was mandated in 2021 to prepare and file with the state in 2022 (eventually, 158 complied). We then compiled a list of recommendations about how to improve local regulation of lower-cost housing development.

In short, I have had a perch from which to identify present-day challenges, misunderstandings, caveats, and achievables.

Housing production requires land, permits, financing, and willing occupants. While federal and state fiscal policies and programs, inflation, supply chains, interest rates, property insurance premiums, land values, transportation costs, government investments and subsidies, lack of skilled construction labor, public support or opposition, and builder confidence all influence housing, zoning is state law that is administered at the local level, and if local government does not grant permission to build, the rest is immaterial. My focus, here, therefore, is land use regulation and permitting at the city and town level. (In the balance of these articles, I will use "town" to refer to all types of municipalities.)

We abolished counties, the last vestige of regional governance, in 1965. Each town is approximately the same size. Beginning in the 1920s, the state delegated to each town the power to zone, which at its core allows each municipality to separate incompatible land uses and group together similar and compatible ones. This law was, and still is called, the Zoning Enabling Act. Under this law, local commissions wield enormous power over our everyday lives: their purview includes population density, building dimensions, traffic management, emergency access, trash disposal, parking, stormwater, drinking water, flooding, coastal management, lighting, air quality, billboards and signs, and open space, and in recent years climate change, resiliency, sustainability, and energy efficiency, to name a few.

But as an administrative structure for the regulation of housing development, this delegation to 169 towns is misaligned and dysfunctional.

First, it stands in contrast to nearly every major governmental function in Connecticut: environmental protection, health care, energy, public utilities, transportation, education, the judicial system, taxation, and public health, among others, are all administered at the state level, by one state agency, with one set of employees, administering one set of rules. There is no

Department of Land Use. The zoning power is the purview of 169… well, fiefdoms…, and proposals to substantially modify this balance have long been an untouchable third rail in state politics. Small town boundaries may be historic and quaint, but they do not align with the responsibility of governing housing markets and needs, which are at least regional. In addition, local land use agencies – zoning, planning, wetlands, and sewer commissions – are generally staffed by volunteers who historically have received little or no training in the land use laws they administer, much less the complex, consequential engineering, environmental, construction, real estate, and financial issues that they are asked regularly to evaluate and decide.

We must also bear in mind that the original 1920s Zoning Enabling Act was adopted primarily because it gave local governments a powerful tool to establish and maintain racial, economic, and even religious segregation. The elements of the act that facilitated these practices –- the power to separate uses, control residential densities, and specify infrastructure – remain in the statute today. While federal and state laws and the courts have outlawed the most overt practices such as racial covenants ("white residents only") and redlining, and our fair housing laws prohibit the most egregious practices, the zoning power can be and still is used to exclude and segregate.

Another piece of this bulwark is that, again historically, judges have been directed to defer to local decision-making, and in most matters to not "substitute their judgment," especially when reviewing adopted regulations and permit decisions. (The one exception is General Statutes § 8-30g, which we will get to later.)What are the consequences of our system for housing? First, the most dedicated, well-meaning land use commissioners are directed to consider only the benefits and impacts of regulations and development plans for the existing residents of their town, not the needs of the region, the state, or housing markets. Under our system, regulations and permits are parochial decisions.

Second, local commission members are indisputably under the influence of their fellow residents on controversial matters. If a land use proposal is opposed, especially in a suburban or rural town, by a petition signed by hundreds of residents, it is difficult for commissioners to be oblivious; they are importuned when they set foot in the supermarket or coffee shop. By law, land use permit decisions are not supposed to depend on public opinion (referenda are illegal in our state), but in reality this occurs regularly, because decisions are local. Proponents of "local choice" in housing, moreover, generally want zoning to remain a town-level decision precisely so they can exert control.

This, then, is the gauntlet through which affordable housing reform must pass. Housing in general and affordable housing in particular depend on the state-legislated balance of power between our state government and our towns. Our current governance structure stifles housing that the free market would produce if unshackled. The perennial issue has been, and will be in 2025, to what degree the General Assembly should further prohibit exclusionary practices and mandate rules and standards that will promote approvals of lower-cost housing.

There is no legal obstacle to the General Assembly reordering this balance. In Connecticut, towns have no inherent home rule authority.

So the challenge of affordable housing reform in 2025 will be to identify with more precision and comprehensiveness how towns are using their land use power to prevent lower-cost housing production; devise a specific list of powers and procedures to be purged, pruned, or clarified; create a revised list of shalls and shall nots; and then summon the political will to revise the state-local balance. To effectively reform our system, we need to be clear-eyed about what the systemic obstacles are.

Part 2:

Myths and Other Misconceptions about Affordable Housing in Connecticut

After 40 years of attending hearings about affordable housing proposals, I conclude that opposition to and discrimination against lower-income households persists, and arises in part from myths and misconceptions. Some of the opposition is based on a lightly veiled perception that those who will reside in proposed housing will be of a different color from, or will not share the lifestyle and values of, existing residents. At hearings at which higher density housing is advanced, opponents often talk about impacts to the "character" of the town or a neighborhood; what they mean is changes in race, ethnicity, or median household income.

Uglier, common stereotypes are that low income households will burden public schools with special needs children, and will introduce crime and drug use where it does not exist today.

But as much as race or class, I think the desire to prevent affordable proposals is based on economics and envy – the belief that affordable programs are government handouts, an affront to those who have "worked hard" to be able to move to a more desirable neighborhood.

The implication is that lower-income households per se are detrimental to communities and unworthy of government help in finding an affordable home. This opinion, in my view, is baseless and reprehensible. Difficulty finding an affordable housing place results from a variety of factors, including the legacy of discrimination that was lawful through about half of the 1900s; the less obvious discriminatory regulatory practices that have taken the place of patent exclusion; the already high and increasing costs of renting or owning; and the reality that many people also "work hard" but are not compensated at levels commensurate with housing costs. I am referring to first responders, teachers, public employees, and blue collar workers, to name a few.

"Cost burdened" households are often the elderly or disabled, those confronted by unexpected calamities such as crushing medical bills, and young adults who are just starting out. Opponents of affordable housing reform essentially advocate that those who already live in a town are entitled to use the zoning power to prevent new construction to serve these populations. But reforming exclusionary zoning should not be considered charity, but as government correcting existing laws that have resulted in a shortage of essential housing.

And then there are the myths purveyed by those who want to use zoning to exclude others, such as:

- Affordable housing lowers neighboring property values. Study after study has disproved this;
- Multi-family housing is incompatible with single-family housing – both uses are residential;
- Affordable housing is only high-density apartments – in fact, there are many sizes and styles;
- "Zoning is a promise" – a legally incorrect statement, because buying land or a house does not protect anyone from use changes or impose an implicit restriction on the use of nearby properties; and
- "Our town is open to everyone who can afford to live here" – a claim that ignores the fact that lack of affordability is the result of local regulation that has pumped up housing costs.

Proponents of local choice and maintaining the existing structure of zoning often contend that if towns are left alone, they will respond to local and regional affordable housing needs.

This is contradicted by at least three facts. First, as explained in my first article, our balkanized land use system institutionalizes parochial decisions and impedes consideration of regional needs. Second, in 1989, the legislature adopted § 8-30g precisely because the Blue Ribbon Commission documented that towns, left alone, were not responding to lower cost housing needs. Third, in 2022-23, my Working Group reviewed affordable housing plans prepared by 90 percent of the towns and concluded that most of the plans, after acknowledging the need, conspicuously declined specifics about regulation revisions, locations for affordable units, and concrete steps and timetables.

Given a chance just two years ago to formulate meaningful affordable housing plans, the vast majority of towns did not deliver.

There is also a persistent misconception about our state's "goal" for affordable housing. This error arises from a misunderstanding of General Statutes § 8-30g, the affordable housing law, which requires municipal zoning commissions, when they deny certain affordable proposals and the property owner appeals to court, to prove a substantial public health or safety reason to justify the denial.

Section 8-30g exempts towns in which at least ten percent of the housing units are counted by the State as government-subsidized or subject to long-term rent or price restrictions. As a result of this exemption, it is often said that "the state's goal" for towns is for them to achieve ten percent affordability, after which the town has satisfied its affordable housing obligation.

This is incorrect. "Affordable housing" is generally units within the economic means of households earning 80 percent or less of the state's "median income," the statistical midpoint of

all household incomes (and paying no more than 30 percent of their income for housing). In 2024, the statewide median in Connecticut for a four-person household is $122,000. But those earning 80 percent or less of the median income are about 40 percent of the population! It is not, and never has been, state policy that a town in which only ten percent of its housing is affordable to 40 percent of the population has met a state-established quota and has no more responsibility. Zoning, being a function of government, is of course political, and thus at times features sharp elbows. While this will always persist, I would be remiss if I didn't point out how affordable housing development is sometimes a contact sport – and one that often causes builders, developers, and lenders to take a long look before proceeding with a development application.

Too often, opponents of affordable development describe an application review as pitting defenseless citizens against "predatory developers," with local regulators, pure of heart and dedicated only to the public interest, given the thankless job of mediating. Nonsense. In my experience, there are people of all types and stripes on all sides of the development process. Nor does money regularly overcome opposition. These labels are inaccurate and meaningless.

Yet, permit applicants often need to beware misuses of public power, office, and responsibility. Some recent examples: Sewer commissions that hide available capacity so it can't be used to support affordable units. Neighbors who tell commissions that no new development can be allowed because the local roads are "dangerous," even though they themselves have never complained. Fire departments that demand greater dimensions for things like fire lanes only for affordable developments. Town staff who demand, only for lower-cost housing, more expensive stormwater management or construction practices than the building or fire codes require. Towns that buy developable land only to prevent it from becoming housing, or adopt mandatory inclusionary zoning with rules that guarantee less housing production. Commissions that adopt regulations for affordable housing that include requirements that they know can't be met. Towns that intentionally file inaccurate reports with the state about their existing housing stock. Towns that deny a wetlands permit for a multi-unit plan, and then approve a mansion that obliterates the same wetland. And so on.

In fairness, in recent years, a small but growing number of local commissions have embraced affordable housing as a societal need they must use their authority to accommodate, adopted revised regulations, and approved units, mainly apartments. But too many applications are still battles against the power that the state has given local commissions to exclude and deny.

As to myths to be exposed and interred, there is also the claim that "§8-30g has been a failure." The proponents of this narrative are mainly legislators and officials from more affluent towns who assert that the law hasn't produced sufficient affordable units, and that few towns have achieved the state goal of ten percent affordability.

Well, as noted earlier, ten percent is not a state goal. Meanwhile, over 34 years, § 8-30g has produced directly at least 28,000 housing units, about 7,000 of which are government

subsidized (such as through federal Low Income Housing Tax Credits) or formally deed-restricted to specified maximum rents or sales prices; and indirectly, the program has spurred many more units, in part by inducing commissions to approve affordable developments just so they can say they did so, and by demonstrating that affordable housing can be attractive and safe and not the threat that was predicted.

The hypocrisy of towns most critical of § 8-30g is that they are mainly those that have few affordable units and have made little progress since the 1980s due to their own exclusionary regulations and practices and visceral opposition to multi-family housing. Emblematic of the hostility is the zoning commissioner who recently described a proposal to extend a sewer line to facilitate an affordable development as “being asked to bring rope to a hanging;” and the first selectman (of a different town) who asserted that a plan for apartments, with 30 percent of its units affordable, would be an “existential threat” to the town – not due to traffic, architecture, or stormwater, but because of the incomes of one third of the proposed residents.

The point is that local land use proceedings involving affordable housing are still too often resisted, not based on planning or impacts, but on myths and misconceptions about “those people” moving in.

As we try to find a better legislated balance between state mandates and local choice in our affordable housing laws and programs, it is essential that we also identify, acknowledge, and put aside the myths, misconceptions, and false narratives that hinder the discussion.

Part 3:

Environmental Protection and Other Issues Affecting CT Affordable Housing

We have so far examined how the structure of government in Connecticut challenges affordable housing reform, and myths and misconceptions that throw policy discussions off track. In this article, the focus is considerations that compete with residential development.

Foremost is environmental protection, in particular drinking water, water quality, and wetlands/watercourses. There is no reason that an affordable housing plan should compromise protection of water resources. In fact, the good news is that our state environmental laws and programs have done a good job of facilitating housing development while protecting environmental quality.

No affordable housing law or program overrides protection of the environment. Wetlands commissions are not subject to § 8-30g, and every affordable development must meet the same standards as market-rate development. Zoning commission denials of § 8-30g proposals based on concerns about water supply or quality have generally been upheld in court as the type of substantial public interest that overrides housing need.

Similarly, while state law does not allow towns to require affordable developments to preserve a specific percentage of property as open space (because this power can be used as an exclusionary tool), it is common for affordable development plans to voluntarily include open space, whether for active or passive recreation, because it is a desired amenity.

Environmental protection, however, has a flip side when it comes to affordable housing, which is local agencies, sometimes abetted by opposed neighbors, inventing or exaggerating concerns to stave off affordable development. At times, opponents who previously have been unconcerned about wetlands protection have taken up the cause when lower-income development is proposed. Speculative concerns about wildlife are often presented in tandem. The latent hypocrisy is that neighbors and opponents sometimes live in older homes that were built decades ago on filled wetlands.

Some wetlands commissions recognize this opposition for what it is. Still, commissioners often feel the wrath of their fellow residents and impose stricter if not illegal environmental and wetlands standards on affordable development. An example, well known in the development community, is the wetlands commission that fought an affordable development by asserting jurisdiction over not only the pond where salamanders would lay their eggs in the spring, but also non-wetlands areas hundreds of feet from the pond where they might crawl. Our Supreme Court and then the legislature invalidated this overreach.

An often overlooked irony of this topic is that multi-family housing can be more environmentally friendly than single-family housing. Clustered units allow more open space. An apartment building can better manage stormwater, save on transportation costs, and result in a lower carbon footprint. Developments with sewers are superior to those with community septic systems. And in general, higher density buildings allow for spreading out the costs of environmental management.

Collectively, then, we need to ensure that affordable development does not occur at the expense of natural and environmental resources, while also keeping a close watch on whether concerns about pollution are real or conjured to reinforce exclusionary zoning.

Another top-of-mind consideration must be how climate change may impact development design, a field now called resiliency planning. The fact that affordable units are proposed does not allow building in flood-prone areas. Conversely, regulators should not credit the argument now being made that higher density development should be banned because rainfall events have become less predictable. In fact, multi-family developments often provide better stormwater management than subdivisions of single-family homes.

Density (housing units per acre of land) is another consideration that sometimes morphs into an environmental concern. Too often, housing opponents criticize any density that is higher than the existing neighborhood. The environmental sensitivity of density, however, depends on topography, layout, building design, and screening; two units per acre can look overly dense, while 25 units on the same parcel can be just fine, if skillfully planned. For example, what is called “light touch density” is an increasingly used and successful technique.

Sewage disposal is another essential factor. Supporting affordable housing should not compromise the proper management of a town’s sewer system. On the other hand, local sewer commissions should never be allowed to hide sewer capacity or fabricate system maintenance concerns to stall affordable developments, as several towns have done in recent years. The state should impose uniform, reduced separation distances for septic systems and less onerous rules for septic field reserve areas. Smaller developments should be allowed to rely on so-called alternative treatment facilities, whose technology has vastly improved in recent years.

And then there are financial considerations. Though not widely understood, local zoning commissions, whether considering affordable or any other types of development, are prohibited by law from making land use permit decisions based on fiscal impact on town services (including education), or property tax collections.

Meanwhile, it is theoretically possible for our state and local governments to spend our way out of the current housing affordability crisis, by simply(!) committing hundreds of millions of dollars to construction subsidies, low interest loans, planning grants, tax credits, tax abatements, rental assistance vouchers, down payment assistance, enterprises zones, utility allowances, public-

private partnerships, and many other techniques. The federal government's most suitable role in housing is providing financial assistance and incentives.

Allocations of financial resources, of course, come at the expense of other competing needs. How and how much our various governments should appropriate to make housing less expensive is beyond the scope of this article and my experience. My point is that while the total financial need to support affordable housing is beyond what government may be able to provide, money spent strategically on the most effective programs can create tens of thousands of new and rebuilt units.

If I were king, I would allocate money to (1) help and oversee towns in doing the critical work (described in the next two articles in this series) of specific land use regulation revisions and choice of development locations; (2) provide rent subsidies and down payment assistance; (3) make available more lower interest rate construction loans; and (4) rehabilitate existing units.

As with other factors listed above, our goal should be to spend wisely, but not let local regulation and permitting stand in the way of financial resources that government is willing and able to commit.

We should not forget environmental justice. It is well documented that from the 1920s to the 1960s, when zoning was a tool of segregation, public infrastructure such as sewer, water, parks, and public transportation was manipulated to exclude minorities. A legal, economic, and moral imperative for affordable housing reform is to acknowledge and dismantle this legacy of zoning and planning that concentrated and underserved minority groups by forcing affordable housing into unsuitable locations.

Finally, a word about historic preservation. Many towns have established districts to preserve structures and places, allowing us to appreciate our past by seeing how our community once looked. But here again, historic preservation can be a tool of exclusion, with opponents of affordable housing arguing that lower cost housing will detract from the "character" of historic buildings, even if the affordable plan will have no physical impact on the historic resource.

In a recent decision, our state Supreme Court held that protecting "viewsheds" (what can be seen) from historic properties is an invalid extension of historic resource protection and could not be used to stop a housing proposal. Like the other protected resources discussed above, we need to ensure that our past is preserved, but not artificially deployed or extended to block compelling needs of our present, such as affordable housing.

Part 4:

Low-Hanging Legislative Fruit for CT Affordable Housing

As noted, in 2022 and 2023, I co-chaired a state-level Affordable Housing Plans Working Group whose charge was to prepare recommendations for the General Assembly about how towns can boost affordable housing production.

Our group, whose membership spanned all levels of government and the public and private sectors, also examined the towns' reports (called "§ 8-30j" plans) about what they themselves proposed to do.

Our recommendations fell into two categories: enforce laws already enacted, because the 2021 law did not provide deadlines or penalties; and proffer a "menu" of regulatory and policy steps for each town to consider.

As to enforcing what is already on the books, we focused on amplifying what the legislature had done in 2021:

- Mandated (previously, "encouraged") that all towns provide housing opportunities "for all residents of the municipality and the planning region," thereby directing local agencies to expressly consider regional needs;
- Required towns to promote "economic diversity" and "choice" in housing;
- Prohibited towns from outright banning multi-family housing;
- Required towns, in their regulations, to "affirmatively further" the purposes of the federal Fair Housing Act, intending to reinforce that lower-cost housing should serve regional needs, and availability of units should be advertised regionally;
- Allowed minimum floor area/housing size rules only in compliance with the state building and health codes, which only requires about 320 square feet for a one-occupant unit;
- Prohibited excessive parking requirements, setting a maximum of one space for a one bedroom unit and two for a two bedroom, but allowing towns to "opt out" of this requirement;
- Established standards for accessory apartments and prohibited unnecessary rules for such units, while also allowing towns to opt-out and maintain their own rules;
- Prohibited towns from adopting numeric or percentage caps on multi-family as a percentage of total housing units;

- Prevented zoning commissions from denying permits based on perceived impact to the "character" of the town, allowing denial based only on specific physical or architectural characteristics; and
- Prohibited fees that exceed a commission's reasonable cost of processing an application.

All of these 2021 rules were positive steps, changes that revised the state's delegation of authority to local land use boards and targeted some of the ways that towns use regulations to exclude or inhibit lower-cost housing.

The problem is that these 2021 changes did not contain enforcement mechanisms or timetables. As a result, as of today, most towns now in violation of the 2021 rules have done little to come into compliance.

For example, there are still more than 20 towns that ban multi-family housing, and dozens that require substantial minimum apartment unit or house sizes without regard to occupancy. Dozens of towns still require excessive parking or have opted out of the 2021 state standards (for no good reason), and have not purged "character of the town" as a criterion from their regulations.

So, step one for the 2025 legislative session should be to mandate, within a reasonable deadline, that towns conform their regulations and procedures to Public Act 21-29.

Regarding the menu portion of our recommendations, we recognized that prescriptions for urban, suburban, and rural areas will differ. The purpose of our list was to raise awareness of existing requirements in local regulations *that should be reexamined for necessity and exclusionary impact*, and items missing from local rules that, if added, would eliminate obstacles.

The full menu is § VII of our report, which I will summarize:

- Allow more units per acre, focusing particularly on large-lot single family zones and where "middle housing" – buildings with two to four units – can be sited;
- Review the definition of "buildable land" for unnecessary exclusions, such as excessive open space requirements;
- Allow for rehabilitation, conversion, or reuse of existing buildings, especially those with functioning sewer and water connections and stormwater management systems;
- Allow any entity with the funding and experience to build affordable housing, not just non-profits or government agencies;
- Be sure that regulations allow, if not mandate, low income units for households with children, the disabled, and the elderly;

- Excise unneeded “design standards,” such as for siding or windows, that add construction cost;
- Modify or repeal onerous unnecessary application procedures, such as requiring public notice through individual certified mailings;
- Re-examine where housing can be built in non-residential zones, bearing in mind that a key purpose of zoning is to separate incompatible uses, but housing can be made compatible with most other uses;
- Allow residential wherever it can function in parallel with office, retail, commercial, institutional, and even light industrial uses;
- Pay special attention to zoning of transit-oriented development locations (which have, in fact, been one focal point of legislative activity in the past two sessions);
- Promote financial steps such as the availability of lower-interest rate mortgages, property tax relief for the disabled and elderly, rental vouchers, and down payment assistance;
- Loosen restrictions on modification of non-conforming uses, to allow rehabilitation and reuse for housing;
- Avoid preferences for existing town residents in affordable unit tenant selection, because in racially segregated towns – of which there are many in Connecticut – these rules maintain the status quo;
- Review the town’s subdivision and sewer regulations for provisions that exclude multi-family and lower cost housing or unnecessarily drive up the cost per unit; and
- To reinforce zoning reform, adopt a revised Plan of Conservation and Development that identifies specific locations where affordable housing can be built, and identify the specific regulation revisions that will pave the way for such development.

Taking off my Working Group Co-chair hat, my proposal is that *in 2025, the General Assembly should mandate that every town make another try at an affordable housing plan, using the Working Group’s consensus menu as the checklist.*

Each town should be directed to scour its regulations and identify requirements that can be repealed or modified, and identify specific locations where affordable housing can be built as-of-right. Each site should have adequate, available sewage disposal, water supply, traffic access, and emergency access.

It should not be necessary for towns to re-do the housing needs research they did in 2022-23. It’s the recommendations for action steps that need attention.

A specific, combined mandate from the legislature to towns could be: “Every town, within two years, shall review and revise its zoning, subdivision, wetlands, and sewer regulations to comply with Public Act. 21-29; and prepare an affordable housing plan that, using the criteria in § VII of the February 2023 Affordable Housing Plans Working Group Report, will identify specific, multiple locations where middle housing or higher density housing can be built as-of-right and with supporting infrastructure available. The sites must collectively enable units equal to X percent of the town’s existing housing stock.”

The legislature should appropriate funds for this planning so this mandate will not be attacked for being unfunded. If the result is production of tens of thousands of units in the next five to ten years, the cost will be modest.

The State Office of Policy and Management (OPM) could be charged with undertaking reviews of town compliance. OPM could be given the authority to step in and impose changes if a town resists or fails. Property owners could be given a private right of court action to force compliance with this checklist process.

The critical points here are (1) the town reports mandated in 2021 were incomplete at best; (2) when towns push back against state affordable housing mandates, they demand “local choice”; and (3) this process mandates regulatory review with a checklist and location identification, but *leaves to the towns to make choices and decide details*. What the proposal does not allow is for towns to resist, maintain the status quo that excludes and discriminates, or maintain regulations that do not serve a proper land use regulation purpose.

It should be noted that the Open Communities Alliance, a housing advocacy group, in recent years, for more than 20 towns, has conducted the type of review of existing regulations and locations advocated here. OCA’s exercise found in every town it reviewed many aspects of local regulations that could be revised, and sites that could be developed, while preserving local choice.

It is unlikely that any of this will happen without a clear mandate and a deadline from the General Assembly. It should be noted that to an extent, mandates prescribed by the General Assembly take local officials off the hook with town residents. In any event, as a state, we need to embrace the proposition that we are in a housing crisis, caused in large part by the state’s delegation of land use power to towns, and local commissions not using that power as needed to ameliorate the crisis. We need to rebalance the delegated authority.

We must stiffen our backbones and not countenance small towns who say they don’t have the resources or that they want to be left alone; suburbs that argue that affordable housing belongs only in cities; and cities that claim they don’t have any place left for housing.

Towns should be required to dismantle exclusion and formulate a specific plan. They can discuss and decide the details, but they must participate.

Part 5:

Actions the CT Legislature Can Take to Promote More Affordable Housing

In this final piece, I propose bolder steps to attaining Connecticut's affordable housing goals. All of them could promote more lower-cost housing. None is intended to make life difficult for local land use boards and town planners, if they will screen out the myths and misconceptions that should not be part of the conversation.

These proposals are intended to match up with and avoid or ameliorate the obstacles I have identified in prior articles.

My list:

Repeal the "protest petition" provision of General Statutes § 8-3(b). This law, part of the original 1920s Zoning Enabling Act (and specifically called out in the book The Color of Law by Richard Rothstein as a pernicious tool of segregation), allows owners of 20 percent or more of land within 500 feet of a proposed zone change or regulation amendment to force a "supermajority" (two thirds) vote at a zoning commission when a zone change is proposed. Let's just say that (unless the proposal is under § 8-30g and a petition can't be filed) when neighbors band together and file a protest petition against a housing proposal, sound land use planning is generally not their primary concern. We should inter this remnant of legal segregation.

Allow "middle housing" – two to four units on one parcel – as-of-right (objective standards, no special permit required) where sewer and water are available, or water and sewage disposal can be provided in compliance with the public health code. This proposal parallels the zoning issue in a current state court case: If, for example, a 4,000 square foot, eight bedroom single-family house is allowed on a two acre lot with only an administrative zoning permit, then why not four 1,000 square foot attached units in one building on the same lot, assuming the health code is met?

Adopt a standard for inland wetlands and watercourses commissions along the lines of, "No commission shall impose stricter impact standards when evaluating a regulated activities permit for a middle housing or multi-family housing development plan than for other applications." Yes, this may be hard to enforce, but sometimes just setting a rule of conduct is helpful. When a wetlands agency applies inconsistent standards, the problem is usually apparent to the development professionals. Note that this proposal does not promote laxity in wetlands regulation or permitting, only consistency.

Amend our state sewer statutes to require every municipal sewer system with more than X gallons of capacity to set aside X percent (five, perhaps) specifically to support middle and multi-family housing. This will force sewer commissions to do a modicum of capacity planning for multi-family and affordable proposals.

Add a property owner's "bill of rights" to the state sewer statutes, stating that, "A property owner who proposes middle or multi-family housing on land within a designated public sewer service district shall have a right of access to the sewer system, provided sufficient capacity is available and an extension and/or connection is physically feasible and will meet engineering requirements."

Further, with respect to sewers, which are often essential to multi-family housing: "No sewer commission may establish or administer a capacity allocation system that restricts sewer discharge available to a specific parcel to the amount necessary for one single-family home."

Sewer commissions sometimes adopt a "sewer matrix" in which no property owner, regardless of acreage, is entitled to more capacity than a single-family home. While commissions claim this is a planning tool, it is often used to preserve the *status quo* of single-family zoning and prevent lots from being converted to middle housing or multi-family units.

In addition, the legislature should **adopt a standard for what are called "sewer avoidance areas,"** so sewerable land cannot be arbitrarily designated as unsewerable. There should also be a uniform, statewide standard for sewage discharge calculations per person, which can range locally from 50 to 150 gallons per day, per person; the unjustified high end of the scale, by limiting residential density, is an exclusionary tool.

Modify 8-30g by eliminating the "industrial zone exemption," and clarifying the state's point system for four-year moratoria from § 8-30g applications. The industrial exemption was adopted in 1995 ostensibly to protect heavy industry from having its business disrupted or curtailed by complaints from adjacent multi-family development. But the exemption has been deployed, for example, to exclude affordable housing in "light industrial" areas where the uses are nominally industrial but have no impacts incompatible with housing.

As to the moratorium rules, in recent years, several towns have devised a strategy of approving affordable units only to achieve an ongoing exemption from § 8-30g. But these rules are intended to be a rest stop, not an off ramp. At a minimum, the General Assembly should **clarify that towns seeking a moratorium** must submit proof of annual, ongoing compliance with maximum income and rent/price limits at the units claimed for points; cannot claim points from one development to achieve multiple moratoria; and must deduct points if they demolish existing affordable units to make way for new ones.

It is sad to see so many religious institutions shrink or go out of existence, but the reality is upon us. Connecticut should, therefore, follow California's lead and **allow multi-family and affordable housing as-of-right on underutilized or vacated religious properties.**

Modular housing (built in a factory, transported to a site) and manufactured homes have proven to be less expensive than so-called “stick-built” homes. Each type has strict construction code. Connecticut has a statute that purports to prohibit discrimination against certain types of manufactured homes, but we need a more affirmative statement from the legislature in support of these alternatives.

The General Assembly should revise the 2021 Public Act to prevent towns from “opting out” of the ban on excessive parking requirements. In my experience, no town that has opted out had a valid reason to do so. Excessive parking is exclusionary and results in unnecessary paving. And bear in mind that limits on parking and minimum unit size, in combination, can make a big difference in density on many parcels.

In the context of group homes for the disabled, our courts have recognized that special permits, which are highly discretionary zoning or planning commission decisions, can be a tool of discrimination. The General Assembly should take this cue and **identify categories of housing,** such as all middle housing (two to four units) proposals and multi-family plans for less than 100 units, and direct that they cannot be required to obtain a special permit. Commissions should specify clear, objective, standards that, if met, will result in site plan approval.

In the first article, I mentioned that local zoning discretion in adopting regulations and evaluating permit applications has been a tool of exclusion and segregation in part because, except for § 8-30g cases, judges are directed to defer to local choice and not substitute their judgment for that of local agencies. But this deference is also a remnant of our exclusionary past. There is nothing in the Zoning Enabling Act or inherent in judicial review that compels courts to endorse or facilitate exclusionary zoning. We need the legislature to overrule this tenet of judicial review.

Alternatively, if a case involving discrimination in housing that makes its way to our Appellate Court or Supreme Court, one of the parties or a friend-of-the-court in a brief could invite the Judges/Justices to review judicial deference to exclusionary zoning and fashion a revised standard, something like: “In reviewing a zoning or planning commission decision to deny an application for middle housing, multi-family housing, or affordable housing not proposed under § 8-30g, a trial court shall conduct a plenary [non-deferential] review as to whether all denial reasons serve a proper purpose of zoning.” This would establish review not as deferential as the traditional judicial standard, but not as stringent as § 8-30g and its shifting of the burden of proof to local commissions.

A word about the “Fair Share” program that has been proposed to and considered by the General Assembly in recent sessions. In general, coming up with an equitably determined number of housing units for which each town must be responsible is a worthy goal. However, the administrative details, such as matching development goals to infrastructure, are complicated. Moreover, Fair Share is based on the town-centric governance that I described in the first article in this series as problematic. In any event, everything proposed in these articles is complementary to programs like Fair Share. If all the steps proposed here were to be

implemented, all housing programs, whether federal, state, or non-profit sponsored, should benefit.

Finally, while our state has done exemplary work to reduce homelessness, assisting this population suffers from the fact that while towns have an amorphous obligation to “care for the poor,” there is no state mandate that towns in their zoning regulations designate at least some sites for a homeless shelter, and so most do not. Siting a shelter could be a regional/multi-town cooperative effort, but the legislature needs to direct all towns to participate, through land use, in sheltering the homeless. Our state’s supportive housing programs that try to transition the homeless to permanent housing are heroic, but the first step on the ladder is providing more places to come in from the cold.

About the Author

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