



Land Use Academy
Center for Land Use Education and Research

Advanced Legal Procedures Training 2023 Virtual Series



Land Use Academy
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RESOURCES

2023 Advanced Training Series



Land Use Academy
Center for Land Use Education and Research

Feb. 2, 4 - 5:30pm

Bias, Predisposition and Conflicts

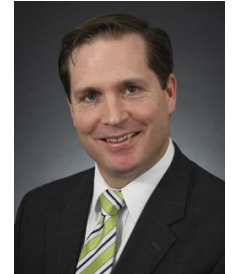
Atty. Rich Roberts, Halloran & Sage



Feb. 9, 4 - 5:30pm

Running a Meeting and Making a Decision

Atty. Ken Slater, Halloran & Sage



Feb. 16, 4 - 5:30pm

Fair & Affordable Housing

Atty. Mark Branse, Halloran & Sage



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Water



Land Use &
Climate Resiliency



Geospatial Tools &
Training



Food Systems



STEM Education &
Local Conservation

<https://clear.uconn.edu>

Land Use Commissioner Training


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Water Land & Climate Mapping STEM Food **Training** Media About


Training



Land Use Commissioner Training

The statewide Land Use Commissioner Training Calendar as well as ongoing virtual trainings to assist in new requirements for planning and zoning commissioners.


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CT DEEP Training / Certificate Courses

A variety of trainings provided by CT DEEP to assist municipal staff in completing regulatory requirements as well as other informational courses.


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UConn CLEAR Training Courses

Training courses offered to a wide audience range and spanning several topics, such as green stormwater infrastructure, land use, farming, climate resilience, and geospatial training.

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CLEAR Webinar Library

The CLEAR webinar library offers free webinars from over a decade. Users can pick and choose which webinars are most informative to them.

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CT Land Use Commissioner Training

Today Sunday, January 29 Print Week Month Agenda

Thursday, February 2

4:00pm Bias, Predisposition, and Conflict - CLEAR Land Use Academy Adv

Thursday, February 9

4:00pm Running a Meeting and Making a Decision - CLEAR Land Use Aca


Thursday, February 16

4:00pm Affordable Housing - CLEAR Land Use Academy Advanced Trainin

Saturday, March 11

9:00am CT Land Use Law for Municipal Land Use Agencies, Boards, Comr

Showing events until 3/31. [Look for more](#)

Events shown in time zone: Eastern Time - New York  Google Calendar

<https://clear.uconn.edu/trainin>

g

Please take note

- Training is NOT legal advice
- Discussion is encouraged but beating a dead horse is not
- Interactive polling ahead
- Use the chat for questions or raise your virtual hand
- Do not use the chat for personal or political conversations
- Stay muted unless called upon
- Recording on <https://clear.uconn.edu/lua>
- Have fun



On what commission do you serve?

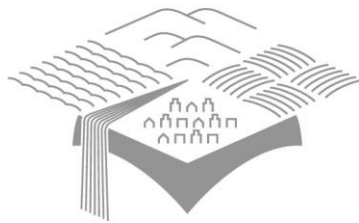
1. Planning
2. Zoning
3. Planning and Zoning
4. ZBA
5. Inland Wetlands and Watercourses
6. Conservation
7. Other
8. n/a



Fair & Affordable Housing



Mark K. Branse
Halloran & Sage LLP



Land Use Academy



Why do we need affordable housing?



GrowingTogetherCT.org

 @GrowingTogetherCT

 @GrowTogetherCT

#rightthingsmartthing #growtogetherct



CT State NAACP
Chapter

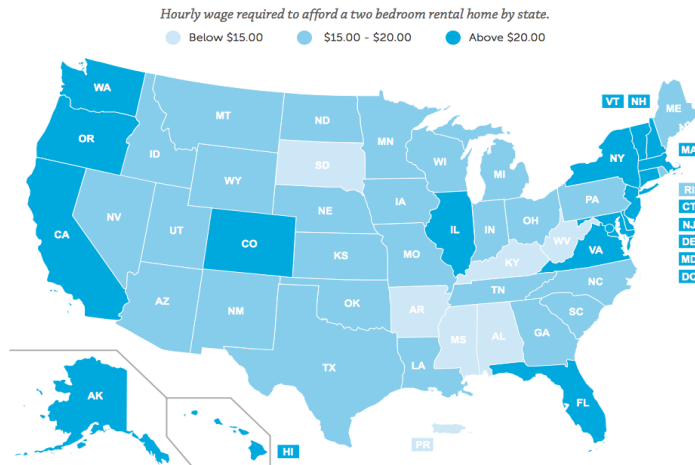


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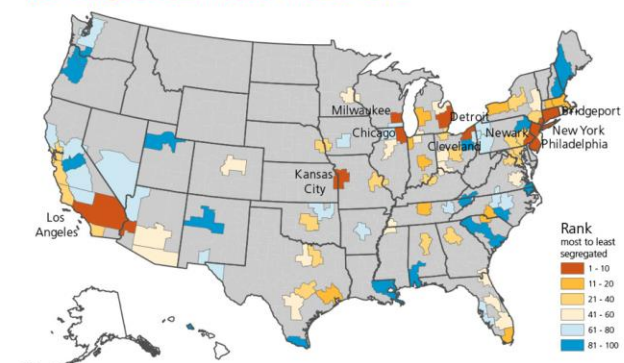
Connecticut faces a dual housing crisis

We are one of the most segregated states in the country.

We have some of the highest housing costs in the country.



Comparing the Nation: Ranking of Segregation in 100 Largest U.S. Metro Areas, 2010



Source: ACS, Gregory, Rolf Pendall, Mark Treskon, and Amy Khare, 2017. *The Cost of Segregation: National Trends and the Case of Chicago: 1990-2010*. Washington, D.C.: Urban Institute.

Slides courtesy of:



Housing Costs in Connecticut are the 10th Highest in the Nation (www.pschoosing.org)

- According to the The Partnership for Strong Communities' Housing in CT 2021 summary, 4,987 publicly supported rental homes in CT are set to have their affordability restrictions expire in the next five years.
- Housing insecurity is widespread; 28% of CT respondents reported they had "slight or no confidence" that they could make next month's rental payment.
- By 2018, 26% of renters spent over 50% of their income on housing costs.



Slides courtesy of:
Marjorie Shansky, Esq.



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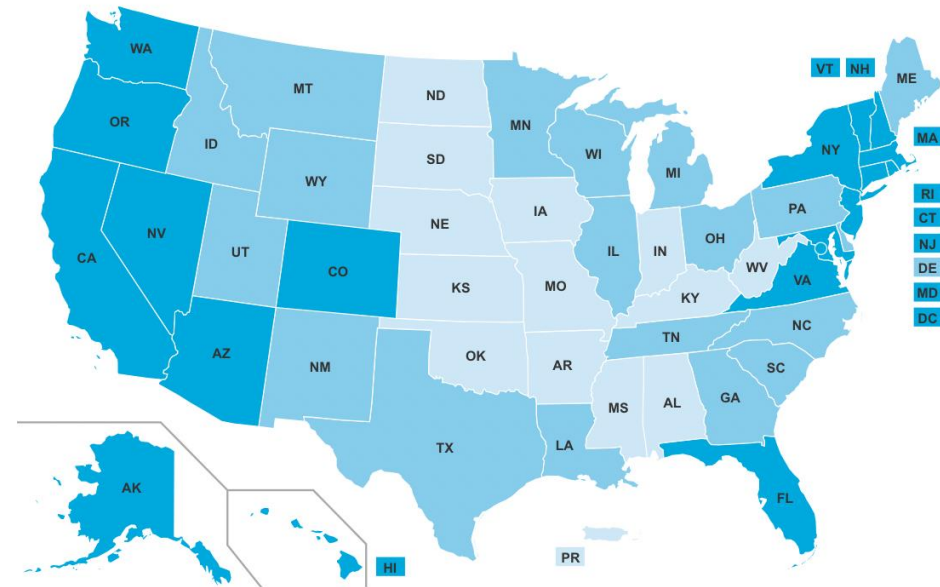
AFFORDABLE HOUSING CRISIS

CT has the 10th highest housing wage in the nation – A family would have to work 79 hours a week at minimum wage to afford a two-bedroom apartment.

How Much Do You Need to Earn to Afford a Modest Apartment in Your State?

Hourly wage required to afford a two bedroom rental home by state.

Below \$17.00 \$17.00 - \$23.00 Above \$23.00



Slides courtesy of:



WHAT IS AFFORDABLE HOUSING?

Households earning 80% of median income paying no more than 30% towards housing costs.

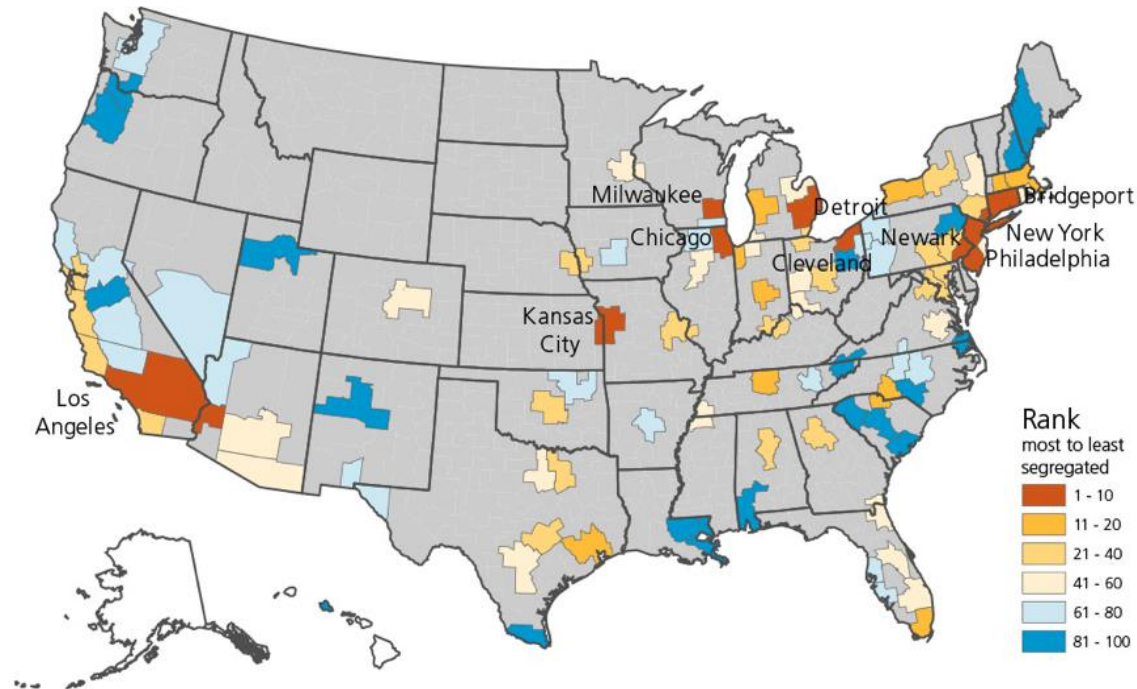
Need: Low Income and Cost Burdened Households			
	Households	Cost Burdened (paying more than than 30% of income on housing)	Severely Cost Burdened (paying more than 50% of income on housing)
Households	1,354,715	474,040	220,695
Below 80% AMI	570,270	376,850	208,130
Below 50% AMI	386,670	293,940	188,010
Below 30% AMI	214,745	167,495	135,740

Slides courtesy of:



CONNECTICUT IS ONE OF THE MOST SEGREGATED STATES

Comparing the Nation: Ranking of Segregation in
100 Largest U.S. Metro Areas, 2010



Slides courtesy of:



Source: Acs, Gregory, Rolf Pendall, Mark Treskon, and Amy Khare. 2017. *The Cost of Segregation: National Trends and the Case of Chicago: 1990–2010*. Washington, D.C.: Urban Institute.

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History of Segregation: Racial Covenants

AGREEMENT CONCERNING BUILDING RESTRICTIONS

WHEREAS, HIGH LEDGE HOMES, INCORPORATED, a corporation organized and existing by virtue of and under the laws of the State of Connecticut, is the owner of a certain tract of land situated in the Town of West Hartford, County of Hartford and State of Connecticut, and known and described as follows:

FIRST PLACE

Lots Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128 on a map entitled, "Section One, High Ledge Tract, owned by R. G. Bent Company, West Hartford, Conn., dated April 1938, Osterling & Salomonson, Land Surveyors", to which reference is hereby made for a more particular description.

SECOND PLACE

Lots Nos. 67, easterly fifty-two (52) feet of 70, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90 on High Ledge Tract owned by R. G. Bent Co., West Hartford, Conn., dated April 1938, Osterling & Salomonson, Land Surveyors", to which reference is hereby made for a more particular description.

THIRD PLACE

Lots Nos. 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128 on a map entitled, "Section Three, High Ledge Tract, owned by R. G. Bent Company, West Hartford, Conn., dated April 1938, Osterling & Salomonson, Land Surveyors", to which reference is hereby made for a more particular description.

AND WHEREAS, High Ledge Homes Incorporated acquired title to the aforesaid property by a warranty deed from The R. G. Bent Company, dated April 15, 1940, recorded in West Hartford Land Records, Volume 150, Page 114; and

WHEREAS, it is the desire and intention of High Ledge Homes Incorporated to create a uniform plan of development for the property hereinafter mentioned and to impose building restrictions thereon which are to be inserted in all deeds conveying title to any part of the above premises.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in consideration of the premises High Ledge Homes Incorporated, for itself, its successors and assigns, does hereby covenant and agree to insert in each and every deed conveying title to any part of the above premises the following restrictions:

- (a) All lots as shown on the maps herein mentioned: lots and no structure shall be erected on any residential detached single family dwelling not to exceed two and one-half stories in height, nor shall any garage, barn or other out-building erected on the premises, nor shall any residence of a two-story or more structure be erected on any lot nearer than five (5) feet to any side lot line.
- (b) No building shall be located on any residential five (5) feet to the front lot line nor nearer than ten (10) feet to the rear lot line, and no building, except a garage or other structure, shall be erected on any lot nearer than five (5) feet to any side lot line.
- (c) No residential structure shall be erected or placed on any lot having an area of less than nine thousand (9,000) square feet.
- (d) No noxious or offensive trade shall be carried on or conducted on any lot which may be or become an annoyance or nuisance to the neighborhood.

(e) No persons of any race except the white race shall use or occupy any building on any lot except that this covenant shall not prevent occupancy by domestic servants of a different race employed by an owner or tenant.

(f) No building shall be erected, placed or altered or permitted to remain on any building plot in this subdivision until the external design and location thereof have been approved in writing by the said High Ledge Homes Incorporated, its successors or assigns, hereinafter designated as the Committee. However, in the event that the said Committee fails to approve such design or location within thirty (30) days after such plans have been submitted to it, then such approval will not be required. The completion of construction of a structure for thirty (30) days shall be construed as prima facie evidence of the Committee's approval. In any case, either with or without the approval of the Committee, no dwelling costing less than \$1,500 shall be permitted on any lot in the property, and the ground floor area of the main structure shall be not less than seven hundred and fifty (750) square feet in the case of a one story structure, nor less than five hundred (500) square feet in the case of a one and one-half, two, or two and one-half story structure.

(g) These covenants are to run with the land and shall be binding on all the parties and all persons claiming under them until January 1, 1965, at which time said covenants shall be automatically extended for successive periods of ten years unless by a vote of the majority of the then owners of the lots it is agreed to change the said covenants in whole or in part.

(h) If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants herein it shall be lawful for any other person or person owning any real property situated in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of the covenants herein.

AGREEMENT CONCERNING BUILDING RESTRICTIONS

WHEREAS, HIGH LEDGE HOMES, INCORPORATED, a corporation organized and existing by virtue of and under the laws of the State of Connecticut, with its principal place of business in the Town of West Hartford, County of Hartford and State of Connecticut, is the owner of a certain tract of land situated in the Town of West Hartford, and known and described as follows:

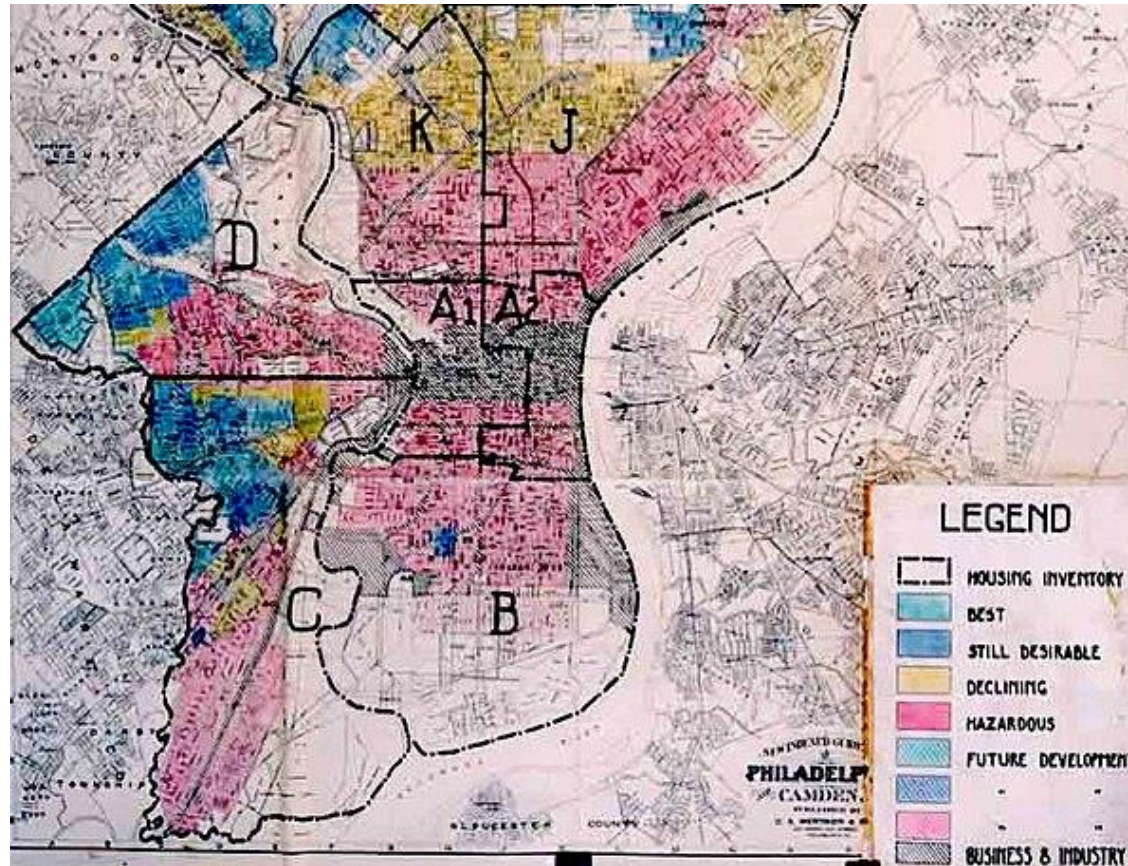
(e) No persons of any race except the white race shall use or occupy any building on any lot except that this covenant shall not prevent occupancy by domestic servants of a different race employed by an owner or tenant.

High Ledge Homes in West Hartford (1940). See [On the Line: How Schooling, Housing, and Civil Rights Shaped Hartford and its Suburbs](#).

Slides courtesy of:



Redlining - We have a history to confront and correct



1936 Home Owner's Loan Corporation "residential security" map

Slides courtesy of:
Marjorie Shansky, Esq.

THE ROLE OF ZONING

Euclid v. Ambler Realty Co.

In 1926 the U.S. Supreme Court endorsed local zoning power to design zoning schemes that designated zones for certain types of buildings and dictated restrictions on lot and building sizes.

The court upheld a municipality's right to use zoning to block multifamily development.



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ZONING AND RACE

B. Racial and Socioeconomic Segregation

i. Historical Background: Euclid in Context

The hallmark of Euclidean zoning is its insistence on dividing the landscape into zones segregated by use and building type:⁵¹ single-family residential, multi-family residential, commercial, light industrial, and so on. While separation of uses was “[i]nitially . . . a European idea intended to remove factories from residential neighborhoods,”⁵² it was also almost immediately understood as a means of excluding poor and minority populations from middle- and upper-class neighborhoods. As Judge Westenhaver put it when *Euclid I* was heard in District Court, “[t]he blighting of property values and the congesting of population, whenever the colored or certain foreign races invade a residential section, are so well known as to be within the judicial cognizance.”⁵³ While the Supreme Court spoke in more

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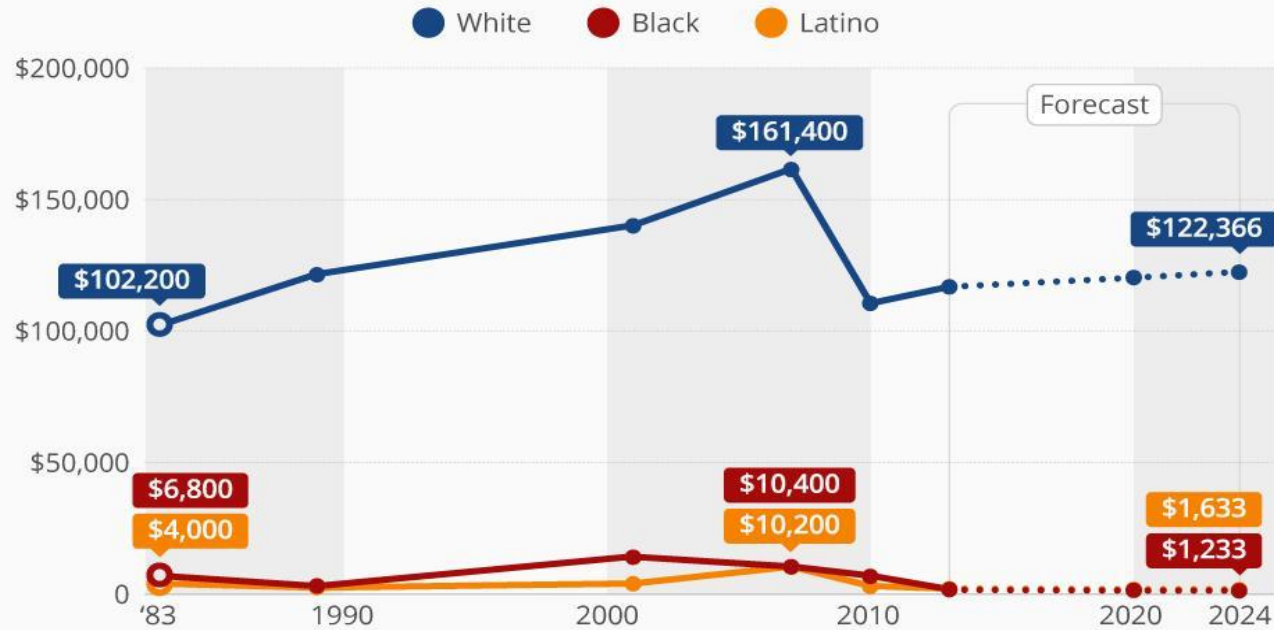


Source: Hall, Eliza, Divide and Sprawl, Decline and Fall: A Comparative Critique of Euclidian Zoning, pg. 923, University of Pittsburgh Law Review (2007). Available at <http://lawreview.law.pitt.edu/issues/68/68.4/Hall.pdf>.

INCOME & WEALTH DISPARITIES

Racial Wealth Inequality Is Rampant In The U.S.

Median household wealth by race/ethnicity in the United States (1983–2024)



@StatistaCharts Source: Prosperity Now & Institute For Policy Studies

Forbes statista

Slides courtesy of:



Forbes, September 2017, available at <https://www.forbes.com/sites/niallmccarthy/2017/09/14/racial-wealth-inequality-in-the-u-s-is-rampant-infographic/#1baff41734e8>.

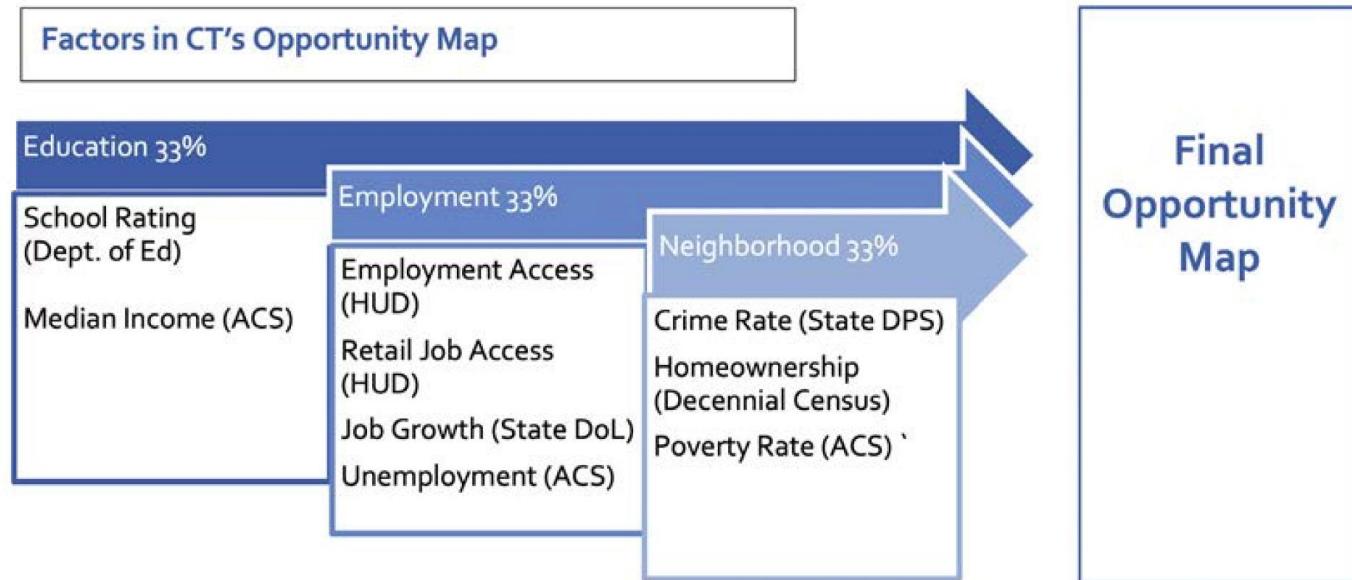
CONNECTION BETWEEN SEGREGATION AND AFFORDABLE HOUSING

<i>Percentage of Households at less than 30% of State Median Income (Adjusted for Household Size)</i>	
White, Non-Hispanic	10.19%
Black, Non-Hispanic	26.77%
Asian, Non-Hispanic	13.04%
Other Race, Non-Hispanic	21.92%
Hispanic of any Race	30.71

Slides courtesy of:



Mapping Opportunity

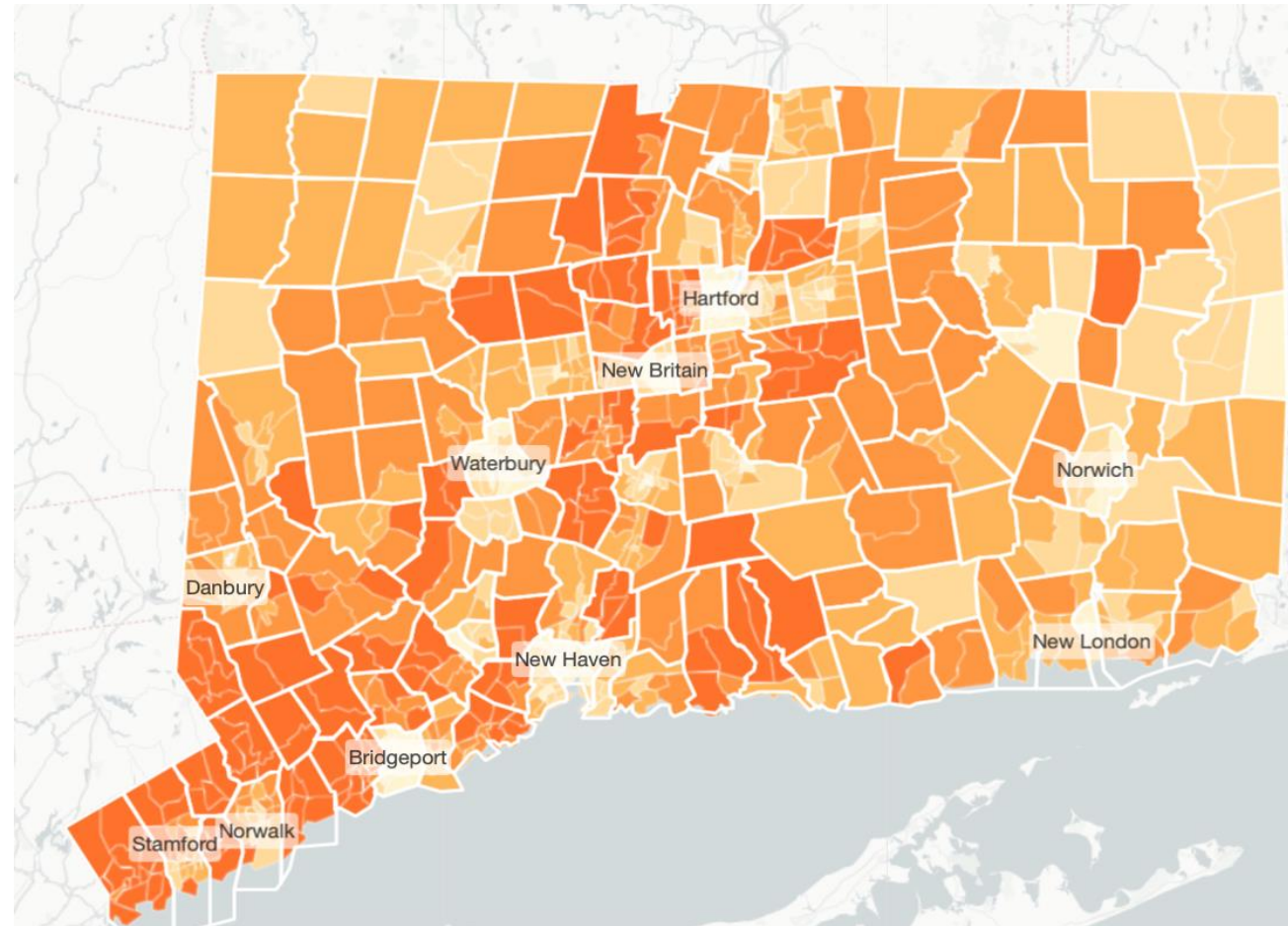
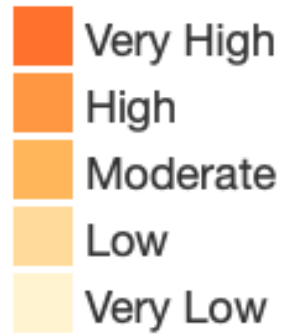


Slides courtesy of:



Mapping Opportunity

Index

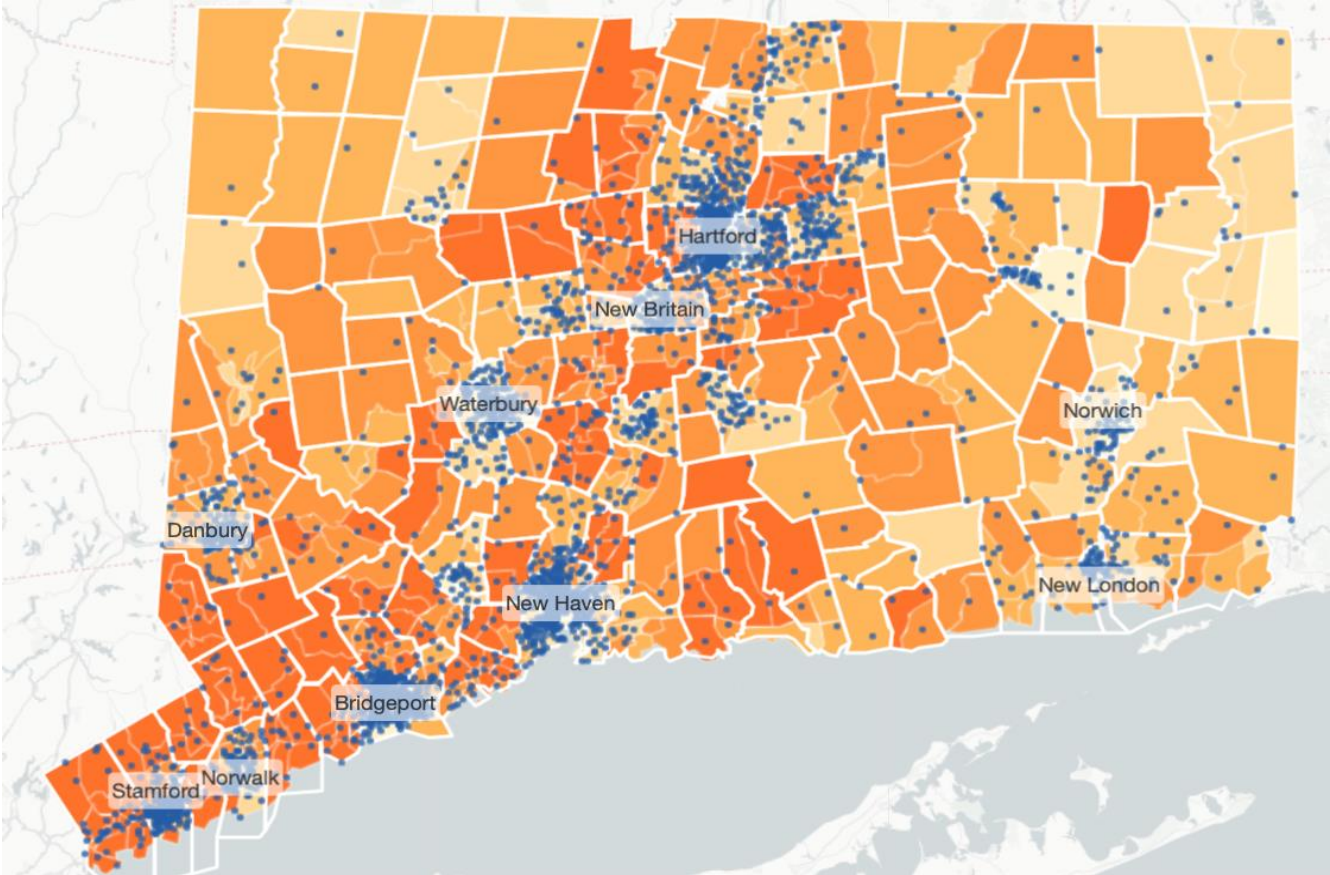
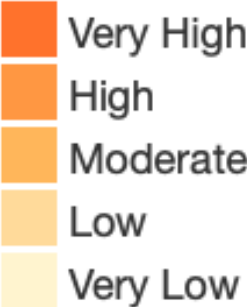


Slides courtesy of:



OPPORTUNITY AND RACE

Index



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Opportunity by Race and Ethnicity in CT

% of People by Race & Ethnicity

Opportunity Level	Non-Hispanic White	Non-Hispanic Black	Hispanic	Non-Hispanic Asian
Very High	26%	4%	8%	27%
High	26%	9%	10%	20%
Moderate	23%	14%	15%	22%
Low	18%	27%	25%	19%
Very Low	7%	47%	43%	13%

75% of white households live outside of low and very low opportunity areas.

74% of Black households live in low and very low opportunity areas.

Slides courtesy of:



OPPORTUNITY BY RACE AND ETHNICITY IN CT

Opportunity Level	Non-Hispanic White	Non-Hispanic Black	Hispanic	Non-Hispanic Asian
Very Low	7%	47%	43%	13%



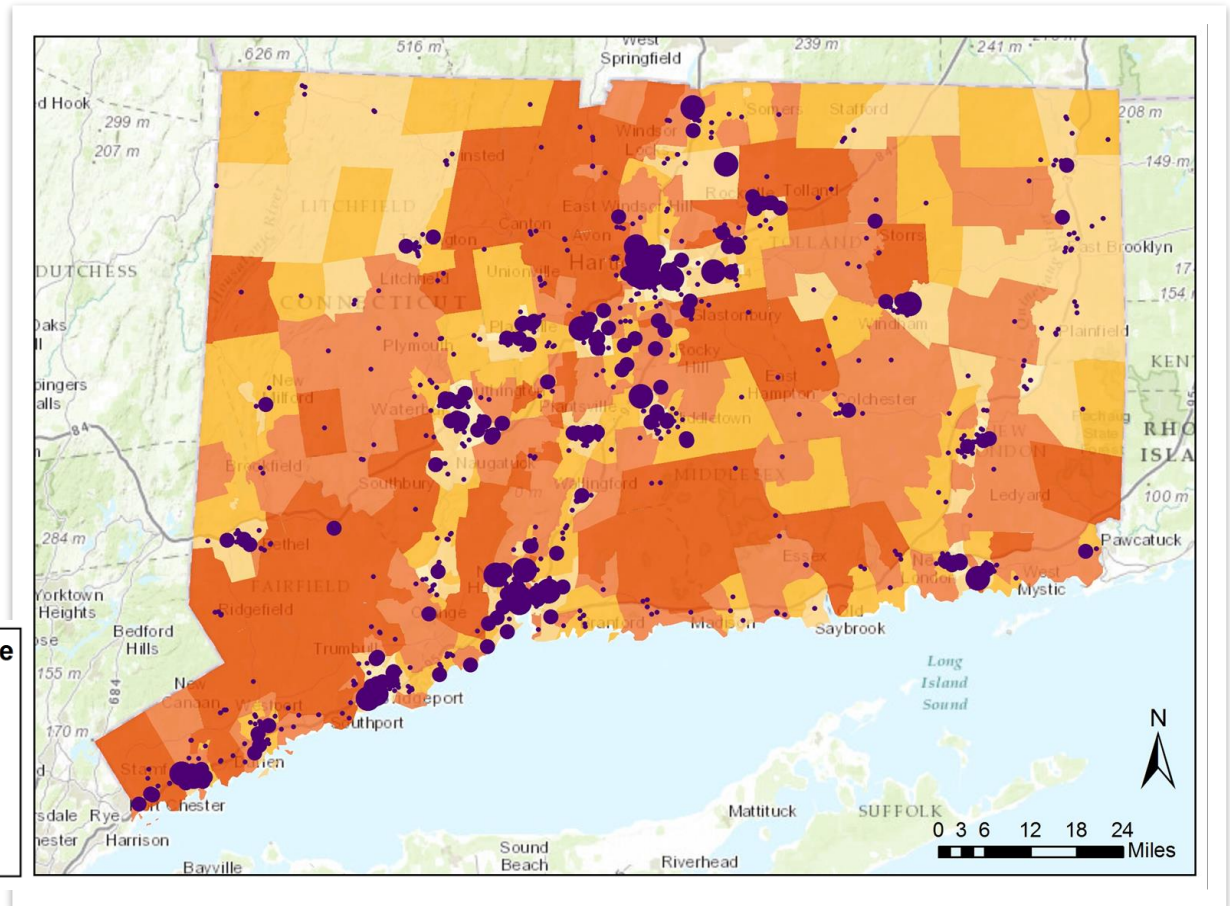
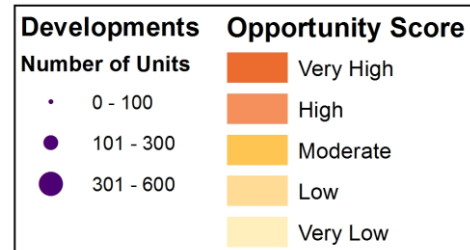
3% of the land area of the state

Slides courtesy of:



SUBSIDIZED HOUSING REFLECTS GOVERNMENT POLICIES

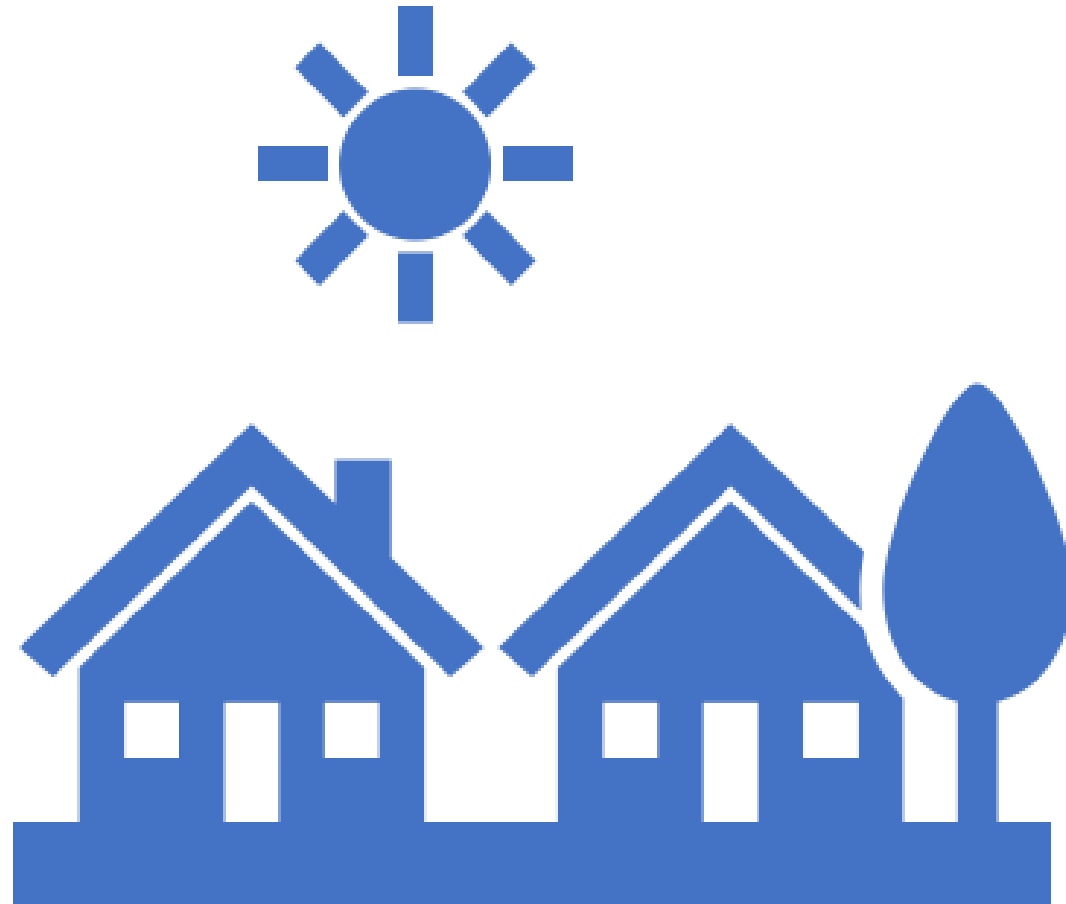
The *Preservation List* includes over 93,000 units of housing, it is incomplete and, to the best of our knowledge, not regularly updated.



Slides courtesy of:



EXISTING LAWS GOVERNING ZONING



Slides courtesy of:



Fair Housing Laws

The federal and state Fair Housing Acts prohibit government policies that have a disparate negative impact on Black and Latino families that is not justified by strong non-discriminatory reasons. Such families are disproportionately lower income and therefore have a disproportionate need for rental, multi-family and affordable housing.

Slides courtesy of:



Zoning Enabling Act, CGS Sec. 8-2 & Planning Mandates, CGS Sec. 8-23

These laws require that towns:

- "encourage the development of ... multifamily dwellings" to meet the regional affordable housing need and
- "promote housing choice and economic diversity, including housing for both low- and moderate-income households."

Slides courtesy of:



Connecticut Constitution, Article First, Sec. 20

“No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his civil or political rights because of religion, race, color, ancestry or national origin.”

Slides courtesy of:



The obligation to address housing opportunities should not come as a surprise

- C.G.S. §8-2: “ . . . Such regulations 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, ”
- See, also, C.G.S. §8-23 re: POCD content

Slides courtesy of:
Marjorie Shansky, Esq.

What is an “affordable housing development?”

Per Conn. Gen. Stats. §8-30g(1):

A proposed housing development which is (A) assisted housing, OR (B) a set-aside development.

Assisted housing:

- 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

Set-aside development :

- **Min. 30% of units sold or rented with covenants that restrict price to 30/80 rule**
 - Persons with income 80% or less than median income
 - Rent/sale price no more than 30% of annual income
- **Median income is the lesser of:**
 - state median
 - area median
 - US HUD amounts
- **Restriction must run for min. 40 years**

Affordability Plan

Must be submitted to commission with affordability housing application

- **Designate the administrator of the plan responsible for enforcing restrictions**
- **Affirmative fair housing marketing plan**
- **Sample calculation of max prices or rents for affordable units**
- **Description of location and sequence of development of affordable units**
- **Draft rules/restrictions/covenants ensuring affordability**
- **Conceptual site plan may be required, if seeking zone change**
 - Applicant doesn't HAVE to submit zone change, but MAY

How is a set aside development different?

Typical development

1. Must comply with zoning & subdiv regs
2. Burden on **applicant** to prove compliance by substantial evidence
3. Commission **MAY** make reasonable changes in bring in compliance

Set aside development

1. Zoning and subdiv. regs don't apply
2. Burden on **commission** to prove:
 - Decision is necessary to protect substantial public interests
 - Public interests clearly outweigh need for affordable housing
 - Public interests can not be protected by reasonable changes
3. Reasonable changes **MUST** be made

How is a set aside development different?

Typical development

4. *Supposed* to state reasons for denial, but don't *have* to
5. Court only reviews evidence supporting commission's decision
6. Court can sustain appeal, dismiss appeal, or remand to commission
7. If application denied or approved with conditions, applicant has 15 days to appeal to Superior Court

Set aside development

4. *Must* state reasons for denial supported by sufficient evidence
5. Court reviews *everything* to see if decision supported by record
6. Court may revise, modify, remand or reverse commission decision
7. If denied or approved with conditions, applicant can file modification to original application within 15 days



How is a set aside development different?

Typical development

7. If application denied or approved with conditions, applicant has 15 days to appeal to Superior Court

Set aside Development

7. If denied or approved with conditions, applicant can appeal OR file modification to original application

Modification of set aside development proposal

- Substantial modification is not grounds for rejection
- 15 day right to appeal is preserved until decision is made on modification
- Decision on modification due 65 days from date of receipt
 - If need inland wetlands approval too, can be extended 35 days from i/w decision
 - Failure to decide = rejection of modification (NOT auto approval)
- Date of receipt is next scheduled meeting or 35 days, whichever is first
- Public meeting required if original proposal had public meeting

What towns are subject to 8-30g?

8-30g procedure does NOT apply if 10% of dwelling units in town are:

- Assisted housing (gov't assisted)
- Financed by CT HFA mortgages
- Set aside developments or incentive housing developments
- Mobile home parks or accessory apartments with covenants restricting to 30/80 rule for 10 years
- Mobile homes in resident-owned parks

What towns are subject to 8-30g?

If 10% of dwelling units don't qualify for those categories, 8-30g applies

- Towns have had over 30 years to “comply”
- Intentionally stacked in favor of developer of affordable housing

8-30g Exemptions

- Town is at or above 10% goal
- Set-aside development is in industrial zone that don't allow "residential uses" and is not assisted housing
 - what constitutes residential use? – dorms? rectories? hotels?
- Town has moratorium from CT DOH
 - Granted when add 2% affordable housing
 - Lasts 4 years
 - Lasts 5 years if town had a previous moratorium and has more than 20,00 dwelling units
 - Incentivizes progress
 - Moratorium DOES NOT apply if:
 - Assisted housing in which 95% of units are for those with less than 60% median income
 - Assisted housing containing 40 or fewer units
 - Applications filed BEFORE the moratorium went into effect



Could this be allowed under 8-30g

A developer finds a cheap piece of land in a residential zone and proposes a high-density development with an affordable housing set aside. The site is not part of the town's plan for high density development and is not convenient to transportation infrastructure.

1. Yes

2. No



Alternatives to 8-30g: 8-12m Incentive housing

- Provides state grants (*subject to availability of funds*) to towns to identify areas for “incentive housing” with *minimum* allowable densities
 - 6 units/acre for single family detached
 - 10 units/acre for duplex/townhouse
 - 20 units/acre for multifamily
- If town has population > 5,000, may request lower densities if can show infrastructure limitations
 - 4 units/acre for single family detached
 - 6 units/acre for duplex/townhouse
 - 10 units/acre for multifamily
- High density reqs. can make it hard to id locations

There are tools you can use to effect change

- Accessory Dwelling Units
- Increased density – additional units/lot
- The Missing Middle
- Tiny Houses
- Manufactured Housing
- Inclusionary Zoning CGS §8-2i
- Overlay zones, density bonuses for affordable units



Slides courtesy of:
Marjorie Shansky, Esq.

Alternatives to 8-30g: Inclusionary Zoning

CGS 8-2i

- Authorizes any town with zoning authority to pass *inclusionary zoning* rules
- Any zoning regulation, requirement, condition, etc. that promotes the development of affordable housing, including:
 - Set aside of reasonable number of housing units
 - Use of density bonuses
 - In lieu payments to affordable housing trust fund
- Town can require a % of development be restricted as affordable
 - Need administrator to qualify buyers/renters of those units

The Challenge: From Planning to Action

- Conn. Gen. Stat. §8-30j requires all Connecticut municipalities to have an affordable housing plan by Spring, 2022.
- CT DOH and RPA Guidance Resource
- **Implement the Plan through Regulation!**
- <https://www.deseintegatect.org/atlas>

Slides courtesy of:
Marjorie Shansky, Esq.



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Fair Housing

From Presentation by Marjorie Shansky, Esq.
New Haven

- Both the Federal & State governments have adopted Fair Housing Acts
 - Federal Fair Housing Act, 42 U.S.C. § 3604, adopted in 1968
 - Americans with Disabilities Act, 42 U.S.C. § 12132, adopted in 1990
 - Discriminatory Housing Practices, Conn. Gen. Stat. § 46a-64c
 - Conn. Gen. Stat. § 8-3(e)
 - Conn. Gen. Stat. § 17a-227 (group home licensing)
- Purpose is to prevent creation or furtherance of racial segregation or other discrimination in housing

Fair Housing Act Amendments

- **Married ADA with FHA in 1996**
- **Make it unlawful to “discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap”**
- **Discrimination includes failure to make reasonable accommodations, 42 U.S.C. § 3604(f)(1)**

Slides courtesy of:
Marjorie Shansky, Esq.



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Who is protected?

- Race
- Color
- Religion
- Sex
- Familial status
- National origin
- Handicap
- Past drug or alcohol addictions and HIV infections

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Protected Persons

- Persons with qualified disabilities or with handicaps including those:
 - With physical or mental impairments which substantially limit one or more of major life activities
 - With record of having such impairment
 - Who are regarded as having such impairment

42 U.S.C. § 3602(h)

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Excluded from FHA Coverage

- ***Current*** users of controlled substances
- Sex offenders
- Sellers or manufacturers of controlled substances
- Persons who are a threat to health or safety of others
- Lodging for transients

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Americans with Disabilities Act

“No qualified person with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by such entity”

42 U.S.C. § 12132

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Recent Changes to ADA

- **“Major Life Activities” extended to include eating, sleeping, thinking, communicating and “operation of a bodily function”**
- **People who successfully manage their disability are still covered**
- **Individuals “regarded as disabled” are covered even if there is no impairment of a major life activity**

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Other Covered Persons

- **Recovering substance abusers**
- **Do not have to be in recovery program**
- **No minimum time of being clean or sober**
- **Families with children (FHA)**

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Regulations and Administration can violate FHAA

- Failure to reasonably accommodate (disability cases only) – [this is avoidable]
- Disparate treatment – requires facial discrimination and/or evidence of discriminatory intent
- Disparate impact – [most claims are here]
- *CAN include municipal zoning decisions and enforcement actions*

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Theories of Discrimination FHAA and ADA

- **Intentional Discrimination**
- **Disparate Impact**
- **Refusal to make reasonable accommodation**

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Intentional Discrimination

- **Discriminatory purpose was a “motivating factor” in decision**
- **Discrimination need not be purposeful or malicious**
- **Factors include impact of decision, background, events leading to decision and departure from normal procedures**

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Disparate Impact

- **Facially neutral policies with discriminatory effect when applied**
- **Significantly adverse or disproportionate impact on a particular group**
- **If proven, burden shifts to town to show legitimate governmental interest and no less discriminatory alternative available**

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Reasonable Accommodation

- Failure to provide results in denial of equal opportunity to enjoy housing of choice
- Town must incur reasonable costs and take modest, affirmative steps to accommodate unless undue hardship or a substantial burden
- Specific request for accommodation must be made
- N/A to “regarded as” persons

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ADA: Title II Technical Assistance Manual II

- **Example of reasonable accommodation**
 - Zoning ordinance has 12 ft set-back from curb. To install ramp to front door of pharmacy, owner must encroach on set-back by 3 ft
 - Granting of set-back variance may be a reasonable modification of town policy – or –
 - Municipal employee charged with ensuring accessibility may grant requests for “reasonable accommodation”



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Significant ADA & FHA cases

- *Valley Housing LP v. City of Derby*, 802 F.Supp.2d 359 (2011)
- *Tsombanidis v. West Haven*, 129 F. Supp.2d 136 (D. Conn. 2001), 180 F. Supp.2d 262 (D. Conn. 2001), 208 F. Supp.2d 263 (D. Conn. 2002), 352 F.3d 565 (2d Cir. 2002)
- *Connecticut Hospital v. New London*, 129 F. Supp.2d 123 (D. Conn. 2001)



Fair Housing Act and Zoning

- Exclusionary zoning practices and rules that operate to exclude persons with psychiatric disabilities are illegal. The ability to live independently and the ability to find suitable housing are “major life activities.”
- Examples of illegal discrimination in zoning may include prohibition of group homes in single-family districts; classifying group homes as commercial, medical, or business facilities; inhibiting definition of “family” to include only related individuals, etc.; imposing a quota on the number of group homes; imposing heightened fire safety code or building code requirements.
- Exclusionary zoning, failure to provide for diverse housing needs, exclusionary practices inflating land cost



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Affirmatively Furthering Fair Housing



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Questions?



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