



Ned Lamont
Governor

STATE OF CONNECTICUT
DEPARTMENT OF HOUSING



Seila Mosquera-Bruno
Commissioner

To: The File
From: Laura Watson
Date: May 10, 2024
RE: New Canaan Moratorium Application: Calculation of housing unit-equivalent points (“HUE” or “HUEs” or “Points”) for the February 22,2024 Application (May 22,2024 – 90 days)

Calculation of HUE Points

Restriction:	80% AMI	\$171,300 AMI <u>X 0.80</u> \$137,040
	60% AMI	\$171,300 AMI <u>X 0.60</u> \$102,780
	50% AMI=	\$171,300 AMI <u>X 0.50</u> \$85,650
	25% AMI=	\$171,300 AMI <u>X 0.25</u> \$42,825

HUEs	80% of SMI	80% of \$119,500 = \$95,600
	60% of SMI	60% of \$119,500 = \$71,700
	40% of SMI	40% of \$119,500 = \$47,800

Under Connecticut General Statutes (“CGS”) Section 8-30g(l)(7), “Points shall be awarded only for dwelling units which (A) were newly-constructed units in an affordable housing development, as that term was defined at the time of the affordable housing application, for which a certificate of occupancy was issued after July 1, 1990, (B) newly subjected after July 1, 1990, to deeds containing covenants or restrictions which require that, for at least the duration required by subsection (a) of this section for set-aside developments on the date when such covenants or restrictions took effect, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as affordable housing for persons or families whose income does not exceed eighty percent of median income. . .”

Prior to Public Act (“PA”) 95-280, 20% of the dwelling units in an Affordable Housing Development had to be deed restricted and remain affordable for at least 20 years.

The definition of a set-aside development did not exist prior to June 1, 2000, but the interpretation is that any project which would have been eligible to use CGS 8-30g under the definition at the time it was originally proposed should be considered a set-aside development, and treated as such. For projects where

the application for such development was filed after July 6, 1995, the set-aside development (which adheres to PA 95-280) shall be awarded .25 points per each market rate unit (as indicated in PA 00-206). For projects where the application was filed before July 6, 1995 (and after July 1, 1990), a set-aside development containing family units which are rental units shall be awarded additional points equal to twenty-two percent of the total points awarded to such development.

PA 95-280 (for applications received on or after July 6, 1995) defines "Affordable Housing Development" as a proposed housing development (A) which is assisted housing or (B) in which not less than 25% 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 CGS 8-39a, for persons and families whose income is less than or equal to 80% of the area median income or 80% of the state median income, whichever is less, for at least thirty years after the initial occupation of the proposed development.

PA 99-261 (which took effect on June 29, 1999) states "Affordable Housing Development" means a proposed housing development (A) which is assisted housing or (B) in which not less than 25% of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least thirty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at or below, prices which will preserve the units as affordable housing. Of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than ten percent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty percent of the area median income or sixty percent of the state median income, whichever is less, and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty percent of the area median income or eighty percent of the state median income, whichever is less."

PA 00-206 (As of June 1, 2000) "Set-aside Development" means a development in which not less than thirty percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to eighty percent of the median income. In a set-aside development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than 15% of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to 60% of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons/families whose income is less than or equal to 80% median income.

PA 17-170, Section 1 (Effective July 24, 2017) (6) For the purposes of this subsection, housing unit-equivalent points shall be determined by the commissioner as follows: (A) No points shall be awarded for a unit unless its occupancy is restricted to persons and families whose income is equal to or less than eighty per cent of the median income, except that unrestricted units in a set-aside development shall be awarded one-fourth point each. (B) Family units restricted to persons and families whose income is equal to or less than eighty per cent of the median income shall be awarded one point if an ownership unit and one and one-half points if a rental unit. (C) Family units restricted to persons and families whose income is equal to or less than sixty per cent of the median income shall be awarded one and one-half points if an ownership unit and two points if a rental unit. (D) Family units restricted to persons and families whose income is equal to or less than forty per cent of the median income shall be awarded two points if an ownership unit

and two and one-half points if a rental unit. (E) Restricted family units containing at least three bedrooms shall be awarded an additional one-fourth point. (F) Elderly units restricted to persons and families whose income is equal to or less than eighty per cent of the median income shall be awarded one-half point. (F) (G) If at least sixty per cent of the total restricted units submitted by a municipality as part of an application for a certificate of affordable housing project completion are family units, any elderly units submitted within such application shall be awarded an additional one-half point. (H) Restricted family units located within an approved incentive housing development, as defined in section 8–13m, as amended by this act, shall be awarded an additional one-fourth point. (I) A set-aside development containing family units which are rental units shall be awarded additional points equal to twenty-two per cent of the total points awarded to such development, provided the application for such development was filed with the commission prior to July 6, 1995. (J) A mobile manufactured home in a resident-owned mobile manufactured home park shall be awarded points as follows: One and one-half points when occupied by persons and families with an income equal to or less than eighty per cent of the median income; two points when occupied by persons and families with an income equal to or less than sixty per cent of the median income; and one-fourth point for the remaining units.

PA 17-170, Section 4 (Effective October 1, 2022) the following sections within subsection (6) were **repealed**:
(E) Restricted family units containing at least three bedrooms shall be awarded an additional one-fourth point.

(G) If at least sixty per cent of the total restricted units submitted by a municipality as part of an application for a certificate of affordable housing project completion are family units, any elderly units submitted within such application shall be awarded an additional one-half point. (H) Restricted family units located within an approved incentive housing development, as defined in section 8–13m, as amended by this act, shall be awarded an additional one-fourth point.

HUE Points are calculated as follows:

Market-rate unit in set-aside development = .25 pts

Elderly unit @ 80% SMI or less = .50 pts

Owned family unit @ 80% SMI or less = 1.0 pts

Owned family unit @ 60% SMI or less = 1.5 pts

Owned family unit @ 40% SMI or less = 2.0 pts

Rented family unit @ 80% SMI or less = 1.5 pts

Rented family unit @ 60% SMI or less = 2.0 pts

Rented family unit @ 40% SMI or less = 2.5 pts

Mobile Manufactured Home in a resident-owned park @ 80% SMI or less = 1.5 pts

Mobile Manufactured Home in a resident-owned park @ 60% SMI or less = 2.0 pts

Market-rate within the Mobile Manufactured Home resident-owned park = 0.25

Bonus Housing Unit – Equivalent Points

Additional points equal to twenty-two percent of the total points awarded to such development, provided the application for such development was filed with the commission prior to July 6, 1995

A. Millport Apartments – 59 Millport Avenue (Bldg. 3 – 20 units) and 61 Millport Avenue (Bldg 4- 20 units)

In 2015, the New Canaan Planning & Zoning Commission approved the tear-down of the 22 Millport apartments, in six buildings that dated from the 1980s and the construction of 73 new affordable dwellings units in four buildings. This property is owned by the Housing authority of New Canaan (HANC) and includes an additional parcel at 33 Millport Avenue that contained a two-family house that was purchased by HANC and merged with the adjoining land. This 73- unit 8-30g development was originally approved by the Planning and Zoning Commission in 2015 (Deed Restriction/Affordability Plan filing info: Phase 1: Notice of Ground Lease – Vol 950 / Pgs 297-303; Open-end Leasehold Mortgage Deed – Vol 950 / Pgs 503-525; Phase 2: Open-End Leasehold Mortgage Deed – Vol 973 / Pgs 951- 967; Recorded Covenant: Phase 1: Land Use Restriction Agreement – Vol 950 Pgs 312-335; Phase 2: Land Use Restriction Agreement - Vol 973/ Pgs 694-716; Financing/ Assistance Agreement: Phase 1: ELIHC with CHFA – Vol 950 / Pgs 304-311; Phase 2: ELIHC with CHFA – Vol / Pgs) and is comprised of 100% affordable units for at least 40 years (Millport Avenue New Canaan, Connecticut Affordability Plan Phase II/73 Apartment Homes Revised Submission, Draft January 2015, Page 2, references the income limits under 8-30g and the 40-year affordability period).

The construction took place in two phases. Phase I, completed in 2016, involved the construction of thirty - three units spread between two buildings at 33 and 35 Millport Avenue. ***This application only refers to Phase II which involves two buildings, 59 Millport Avenue (Building 3) and 61 Millport Avenue (Building 4).*** The financing for the second phase at 59 and 61 Millport Avenue (40 new units) is referred to as “Phase II.” Each building respectively contains 20 units and both buildings were completed in 2018. In the approval and financing documents, the addresses of this development vary. The documents refer to 57 and 65 Millport as well as the addresses listed above. Due to numerous lot mergers required for this project, there have been address changes as the project reached completion. The two buildings are currently identified by the US Postal Service as 59 and 61. Certificate of Occupancy for 59 Millport Avenue (Building 3) was issued on 2/14/2018 and the Certificate of Occupancy for 61 Millport Avenue (Building 4) was issued on 3/28/2018. Person or entity responsible for compliance: Westmount Management, 36 Park Place, Branford, CT 06405.

In accordance with CGS Section 8-30g (l)(3), “Eligible units completed **after** a moratorium has begun may be counted toward establishing eligibility for a subsequent moratorium.” New Canaan’s initial Certificate of Affordable Housing Completion was issued on June 6, 2017; therefore, according to the materials provided, the twenty affordable units at 59 Millport Avenue and the twenty affordable units at 61 Millport Avenue are eligible for consideration.

This development falls under PA 00-206 (As of June 1, 2000) - “Set-aside Development” means a development in which not less than thirty percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to eighty percent of the median income. In a Set-aside Development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than 15% of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to 60% of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons/families whose income is less than or equal to 80% median income.

“The lesser of test” as per PA 95-280 (effective July 6, 1995) did exist when the project was first proposed and should be applied relative to consideration for calculating HUE points. The CHFA Low Income Housing Tax Credit (LIHTC) recorded documents reference all units being at 60% AMI. However, the recorded deed restrictions (Open-End leasehold Mortgage Deed Vol 950/Pgs 503—525) and Open End Leasehold Mortgage Deed Vol 950/Pgs 951-967) reference the Millport Avenue New Canaan, Connecticut Affordability Plan Phase II/73 Apartment Homes Revised Submission Draft January 2015, Page 2, under which 15% of the 73 units are to be rented to households who are equal to or less than 60% of the median income as defined in 8-30g-1(10) of the Regulations of Connecticut State Agencies. All other units will be rented to households who are equal to or less than 80% of the median income as defined in 8-30g-1(10) of the Regulations of Connecticut State Agencies, thereby requiring utilization of the “lesser of state or median income” test which requires utilizing state median income in this case.

Income eligibility for the 40 units being claimed is as follows, in accordance with the ELIHC recorded in Volume 973 Page 722 of the Land Records of the Town of New Canaan and in documentation provided by the town:

# of Units	# of Bedrooms	SMI Affordability	HUE's Per Unit	Total HUE's
17	1	80% of SMI	1.5	25.5
12	2	80% of SMI	1.5	18.0
4	3	80% of SMI	1.5	6.0
1	1	40% of SMI	2.5	2.5
4	2	40% of SMI	2.5	10.0
2	3	40% of SMI	2.5	5.0
40 total units			TOTAL	67

Total HUE points = 67 pts

CGS 8-30g(l)(8) states that “Points shall be subtracted, applying the formula in subdivision (6) of this subsection, for any affordable dwelling unit which, on or after July 1, 1990, was affected by any action taken by a municipality which caused such dwelling unit to cease being counted as an affordable dwelling unit.” In 2015, the New Canaan Planning and Zoning Commission approved the tear-down of 22 of the Millport apartments, in six buildings that dated from the 1980s and construction of 73 new affordable dwelling units in four buildings. This property is owned by the HANC and includes an additional parcel at 33 Millport Avenue that contained a two-family house that was purchased by HANC and merged with the adjoining land.

The construction took place in two phases. Phase 1 in 2016 included the first two structures at 33 Millport Avenue (18 units) and 35 Millport Avenue (15 units) and was included in their first application for a Certificate of Affordable Housing Project Completion. Phase II involved the second two buildings, 59 Millport Avenue, and 61 Millport Avenue each contain 20 units and were completed in 2018.

Thirty-three (33) new units were constructed as part of Phase 1, which again was used in the initial application for a Certificate of Affordable Housing Project Completion. Twenty-two (22) units were demolished as part of that initial Phase 1.

CGS 8-30g(l)(8) states that that “Points shall be subtracted, applying the formula in subdivision (6) of this subsection, for any affordable dwelling unit which, on or after July 1, 1990, was affected by any action taken by a municipality which caused such dwelling unit to cease being counted as an affordable dwelling unit.”

The units that were demolished were restricted to households at or below 80% of Area Median Income. According to the formula in subdivision (6) of CGS 8-30g(l), the demolished units would not have qualified for any housing unit equivalent points because the definition of ‘median income’ set forth in CGS 8-30g(a)(7) states, in relevant part, that median income is “the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located. . .”. In this community, the definition of ‘median income’ requires the use of the state median income. Consequently, if the units had been rebuilt subject to the original affordability restriction, 80% of Area Median Income, they would not have received any housing equivalent points under the formula.

Units Demolished:

# of Units	AMI Affordability	SMI Equivalent	HUE’s Per Unit	Total HUE’s Deducted
22	80% of AMI	Not Equivalent	0.0	0.0
			TOTAL	0.0

Total HUEs for units claimed at Millport Apartments less HUEs to be subtracted under the formula: 67 HUEs minus 0.0 HUEs = Total HUEs for claimed units at Millport Apartments = 67 HUEs

Compliance Certification Affidavit signed 12/4/2023 for Millport Apartments Phase II – 59 & 61 Millport Avenue in regard to Connecticut General statutes Sec 8-30h. Annual certification of continuing compliance with affordability requirements. Certification was made that the forty (40) units in the 100% “set -aside” development are restricted under an Affordability Plan filed in the Office of the Planning and Zoning Department, that the units are restricted in compliance with that Plan for a period of 40 years from the date of the issuance of the Certificate of Occupancy for each of the units, and that, therefore, the development continues to be in compliance with the restrictions required under Connecticut General Statutes Section 8-30g.

B. Canaan Parish – 186 Lakeview Avenue

This 100-unit 8-30g development was originally approved by a special permit on September 17, 2018 by the New Canaan Planning and Zoning Commission for the demolition of 60 existing units and construction of 100 new units of multi-family housing at 186 Lakeview Ave., New Canaan, CT, which approval is filed in the New Canaan Land Records in Volume 992, Page 481. This approval ties the development to Canaan Parish Lakeview Avenue, New Canaan, Connecticut Affordability Plan for Canaan Parish Redevelopment, July 2018, Submitted by Canaan Parish Redevelopment, LLC to the New Canaan Planning and Zoning Commission, (Deed Restriction/Affordability Plan filing info: Affordability Plan – Vol 1052 / Pgs 176-200). The HANC Resolution 21-01 Canaan Parish 8-30g Income Limits Commitment (Book 1052 page176) further clarifies the median income intention in the Canaan Parish Lakeview Avenue, New Canaan, Connecticut Affordability Plan for Canaan Parish Redevelopment, July 2018, Submitted by Canaan Parish Redevelopment, LLC to the New Canaan Planning and Zoning Commission, Page 2.

Building 1, containing 60 Section 8 assisted rental units was completed in October 2021. Building 2, containing 40 additional affordable units was completed in June of 2023. The permanent Certificate of Occupancy was granted for both buildings on June 8,2023. ***This 2024 application is to include Building 1, 60 units.***

This development falls under PA 00-206 (As of June 1, 2000) - “Set-aside Development” means a development in which not less than thirty percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to eighty percent of the median income. In a Set-aside Development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than 15% of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to 60% of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons/families whose income is less than or equal to 80% median income.

“The lesser of test” as per PA 95-280 (effective July 6, 1995) did exist when the project was first proposed and should be applied relative to consideration for calculating HUE points. The *Housing Authority of the Town of New Canaan Resolution 21-01 Canaan Parish 8-30g Income limits Commitment* was filed in Book 1052 Page 176 on 10/12/2021 reiterating conformance of the Affordability Plan with CGS 8-30g with 15% (15 out of 100 units) being rented to persons and families whose income is less than or equal to 60% of the median income, and the remainder of the units being rented to persons and families whose income is less than or equal to 80% of the median income and that the restriction is for no less than 40 years. It also acknowledges that “median income” pursuant to CGS 8-30g(a)(7) is defined as “the lesser of the state median income or the area median income for the areas in which the municipality containing the affordable housing development is located, as determined by the United States Department of Housing and Urban Development.”

Income eligibility for the 49 units being claimed is as follows, in accordance with documentation provided by the town:

# of Units	# of Bedrooms	SMI Affordability	HUE's Per Unit	Total HUE's
12	1	80% of SMI	1.5	18
23	2	80% of SMI	1.5	34.5
0	3	80% of SMI	1.5	0
3	1	60% of SMI	2.0	6
4	2	60% of SMI	2.0	8
7	3	60% of SMI	2.0	14
49 total units			TOTAL	80.5

Total HUE points in the 2024 Moratorium application being claimed: 80.5 Points

CGS 8-30g(l)(8) does apply and states “Points shall be subtracted, applying the formula in subdivision (6) of this subsection, for any affordable dwelling unit which on or after July 1, 1990, was affected by any action taken by a municipality which caused such dwelling unit to cease being counted as an affordable dwelling unit.”

The units that were demolished were restricted to households at or below 80% of Area Median Income. According to the formula in subdivision (6) of C. G. S. 8-30g(l), these units would not have qualified for any housing unit equivalent points because the definition of ‘median income’ requires the use of the State Median Income in this community. So, if the units had been rebuilt to the same affordability, 80% of Area Median Income, they would not have received any housing equivalent points under the formula

Units Demolished:

# of Units	AMI Affordability	SMI Equivalent	HUE's Per Unit	Total HUE's Deducted
60	80% of AMI	Not Equivalent	0.0	0.0
			TOTAL	0.0

Total HUE pts for units claimed at Canaan Parish less HUEs to be subtracted under the formula. 80.5 HUEs minus 0.0 HUEs = Total HUE's for claimed units at Canaan Parish = 80.5 HUE Points

Compliance Certification Affidavit signed 12/4/2023 for Canaan Parish – 186 Lakeview Avenue Buildings 1 & 2 in regard to Connecticut General statutes Sec 8-30h. Annual certification of continuing compliance with affordability requirements. Certification was made that one hundred (100) units in the 100% affordable “set-aside” development are restricted under an Affordability Plan filed in the office of the Planning & Zoning Department, that the unit are restricted in compliance with the Plan for a period 40 years from the date of the issuance of the Certificate of Occupancy for each of the units, and that, therefore, the development continues to be in compliance with the restrictions required under Connecticut General Statutes Section 8-30g.

SUMMARY:

PROJECT NAME	HUE POINTS
Millport Apartments	67.0
Canaan Parish	80.5
Total	147.5

New Canaan needs a minimum of 150.04 HUEs (per the latest census numbers 2020: 7,502 dwelling units x 2% = 150.04 points for New Canaan), therefore New Canaan is NOT ELIGIBLE based on the HUEs claimed and eligible in the application.