Advanced Legal Procedures Training
2023 Virtual Series
2023 Advanced Training Series

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
Center for Land Use Education and Research

Water

Land Use & Climate Resiliency

Geospatial Tools & Training

Food Systems

STEM Education & Local Conservation

https://clear.uconn.edu
Land Use Commissioner Training

CT Land Use Commissioner Training

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

https://clear.uconn.edu/training
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
Why do we need affordable housing?
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.
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.
WHAT IS AFFORDABLE HOUSING?

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

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

Growing Together Connecticut

Land Use Academy

CLEAR

UCONN

COLLEGE OF AGRICULTURE, HEALTH AND NATURAL RESOURCES
History of Segregation: Racial Covenants

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.
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: single-family residential, multi-family residential, commercial, light industrial, and so on. While separation of uses was “[i]ntially . . . a European idea intended to remove factories from residential neighborhoods,” it was also almost immediately understood as a means of excluding poor and minority populations from middle- and upper-class neighborhoods. As Judge Westenhover 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.” While the Supreme Court spoke in more

INCOME & WEALTH DISPARITIES

Historically, Blacks and Latinos earned on average half or less of what whites earned and had a 10% or less of the wealth.

This wealth disparity is projected to widen to Blacks and Latinos having only 1% of the wealth that whites have.


Slides courtesy of:

Growing Together Connecticut

Land Use Academy
Center for Land Use Education and Research

CLEAR

UCONN
College of Agriculture, Health and Natural Resources
### Percentage of Households at less than 30% of State Median Income (Adjusted for Household Size)

<table>
<thead>
<tr>
<th>Race Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>White, Non-Hispanic</td>
<td>10.19%</td>
</tr>
<tr>
<td>Black, Non-Hispanic</td>
<td>26.77%</td>
</tr>
<tr>
<td>Asian, Non-Hispanic</td>
<td>13.04%</td>
</tr>
<tr>
<td>Other Race, Non-Hispanic</td>
<td>21.92%</td>
</tr>
<tr>
<td>Hispanic of any Race</td>
<td>30.71%</td>
</tr>
</tbody>
</table>
Mapping Opportunity

Factors in CT’s Opportunity Map

Education 33%
- School Rating (Dept. of Ed)
- Median Income (ACS)

Employment 33%
- Employment Access (HUD)
- Retail Job Access (HUD)
- Job Growth (State DoL)
- Unemployment (ACS)

Neighborhood 33%
- Crime Rate (State DPS)
- Homeownership (Decennial Census)
- Poverty Rate (ACS)

Final Opportunity Map

Slides courtesy of:

Land Use Academy
Clear
UCONN College of Agriculture, Health and Natural Resources
Mapping Opportunity

Index
- Very High
- High
- Moderate
- Low
- Very Low
OPPORTUNITY AND RACE

Index
- Very High
- High
- Moderate
- Low
- Very Low

Slides courtesy of:

Growing Together Connecticut

Land Use Academy
Center for Land Use Education and Research

CLEAR

UCONN
COLLEGE OF AGRICULTURE, HEALTH AND NATURAL RESOURCES
# Opportunity by Race and Ethnicity in CT

## % of People by Race & Ethnicity

<table>
<thead>
<tr>
<th>Opportunity Level</th>
<th>Non-Hispanic White</th>
<th>Non-Hispanic Black</th>
<th>Hispanic</th>
<th>Non-Hispanic Asian</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very High</td>
<td>26%</td>
<td>4%</td>
<td>8%</td>
<td>27%</td>
</tr>
<tr>
<td>High</td>
<td>26%</td>
<td>9%</td>
<td>10%</td>
<td>20%</td>
</tr>
<tr>
<td>Moderate</td>
<td>23%</td>
<td>14%</td>
<td>15%</td>
<td>22%</td>
</tr>
<tr>
<td>Low</td>
<td>18%</td>
<td>27%</td>
<td>25%</td>
<td>19%</td>
</tr>
<tr>
<td>Very Low</td>
<td>7%</td>
<td>47%</td>
<td>43%</td>
<td>13%</td>
</tr>
</tbody>
</table>

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.
OPPORTUNITY BY RACE AND ETHNICITY IN CT

<table>
<thead>
<tr>
<th>Opportunity Level</th>
<th>Non-Hispanic White</th>
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<tr>
<td>Very Low</td>
<td>7%</td>
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<td>43%</td>
<td>13%</td>
</tr>
</tbody>
</table>

3% of the land area of the state

Slides courtesy of: Growing Together Connecticut
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.
EXISTING LAWS GOVERNING ZONING
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.
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.”
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.”
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/convenants 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?

<table>
<thead>
<tr>
<th>Typical development</th>
<th>Set aside development</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Supposed to state reasons for denial, but don’t have to</td>
<td>4. Must state reasons for denial supported by sufficient evidence</td>
</tr>
<tr>
<td>5. Court only reviews evidence supporting commission’s decision</td>
<td>5. Court reviews <em>everything</em> to see if decision supported by record</td>
</tr>
<tr>
<td>6. Court can sustain appeal, dismiss appeal, or remand to commission</td>
<td>6. Court may revise, modify, remand or reverse commission decision</td>
</tr>
<tr>
<td>7. If application denied or approved with conditions, applicant has 15 days to appeal to Superior Court</td>
<td>7. If denied or approved with conditions, applicant can file modification to original application within 15 days</td>
</tr>
</tbody>
</table>
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 form 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
- 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
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
Fair Housing

- Both the Federal & State governments have adopted Fair Housing Acts
  - 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)
Who is protected?

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

Slides courtesy of: Marjorie Shansky, Esq.
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)
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
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
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

Slides courtesy of: Marjorie Shansky, Esq.
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)
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**
Theories of Discrimination FHAA and ADA

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

Slides courtesy of: Marjorie Shansky, Esq.
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
Disparate Impact

- Facial 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

Slides courtesy of: Marjorie Shansky, Esq.
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
• 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”
Significant ADA & FHA cases

• **Valley Housing LP v. City of Derby, 802 F.Supp.2d 359 (2011)**


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.

Slides courtesy of: Marjorie Shansky, Esq.
Redlining - We have a history to confront and correct

1936 Home Owner’s Loan Corporation “residential security” map

Slides courtesy of: Marjorie Shansky, Esq.
Housing Costs in Connecticut are the 10th Highest in the Nation (www.pschousing.org)

• According 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.
Affirmatively Furthering Fair Housing

Slides courtesy of: Marjorie Shansky, Esq.
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
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.desegregatect.org/atlas
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.
Questions?