



January 27, 2016

Westport Planning and Zoning Commission
110 Myrtle Avenue
Westport, CT 06880

Attn: Chip Stevens, Chairman

Dear Chairman Stevens and members of the Commission:

The purpose of this letter is to direct your attention to the importance of Westport expanding its affordable housing stock that is truly open to low income families of color and single-parent families in order to comply with its duty under federal and state law to both affirmatively further fair housing and to avoid having a disparate impact on people of color, single-parent families, and potentially other protected classes. It is imperative that Westport take this into account when considering proposals for affordable housing development in town, including the Conn. Gen. Stat. § 8-30g proposal for 122 Wilton Road, and begin planning for a more significant investment in affordable housing in the future.

The current proposal for 122 Wilton Road is an excellent opportunity to expand housing choice for lower income families of color and single-parent families because it includes 48 units, with thirty-nine 1-bedroom units and nine 2-bedroom units. In conformance with Conn. Gen. Stat. § 8-30g, 30% of these units would be affordable as defined by the statute.

Westport is Resource-Rich but Racially Isolated

According to a Department of Housing endorsed analysis conducted by Open Communities Alliance and its partners, Westport is a high opportunity area, meaning that it is thriving with high-performing schools, access to jobs, and safe neighborhoods.¹ Unfortunately, Westport does not reflect the racial, ethnic or economic demographics of its geographic region or state as a whole.

- *Race and Ethnicity:* Only 11.4% of Westport's population is comprised by people of color, compared to 77.5% for Bridgeport and 31.4% for the state as a whole. The Black/White disparity is even starker. While the state of Connecticut is 10.3% Black and Bridgeport is 36% Black, *only 1% of Westport's population is Black*. Less than 2% of Westport's student population is Black, and only 4% is Hispanic, compared with 20% and 40% for Norwalk and 39% and 48% for Bridgeport.
- *Single Parents:* Only 6% of Westport households are single parents with children, compared to 20.3% for Bridgeport.

¹ To learn more about opportunity mapping, see http://www.ctoca.org/introduction_to_opportunity_mapping.

Duty to Affirmatively Further Fair Housing

Westport has a duty to Affirmatively Further Fair Housing, meaning it must undertake efforts under both federal and state law to counteract the history of government policies that reinforce segregation. Specifically, as a recipient of funding for project-based Section 8 for the Canal Park development, Westport is subject to the Fair Housing Act's obligation to affirmatively further fair housing.² As a recipient of Low Income Housing Tax Credit funding and funding under the State-Sponsored Housing Portfolio Preservation Initiative in 2014 for the Sasco Creek development, Westport is also subject to Connecticut's requirement to affirmatively further fair housing.³

The most significant action Westport can take to affirmatively further fair housing is to promote the creation of affordable housing within the town. Currently, only 3% of Westport's housing stock is affordable under Conn. Gen. Stat. § 8-30g. This compares to nearly 12% of the housing in Norwalk and nearly 19% of the housing in Bridgeport.

Duty to Avoid a Disparate Impact

Furthermore, under state and federal law, Westport has a duty to avoid having a disparate impact on protected classes, including people of color and single-parent families. The federal Fair Housing Act states that:

[I]t shall be unlawful ... To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or *otherwise make unavailable* or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.⁴

The Supreme Court has confirmed that the language "otherwise make unavailable" provides a basis for claims of disparate impact under the federal Fair Housing Act.⁵ The same language is present in Conn. Gen. Stat. § 46a-64c(1), and Connecticut courts explicitly state that they rely on federal case law interpreting the federal Fair Housing Act in addressing cases brought under both federal and state housing laws⁶ and have rendered decisions mirroring the federal standard.⁷ Therefore, Westport must ensure that its policies do not have a disparate impact on a protected class, including people of color and single-parent families, who are disproportionately lower income and in need of affordable housing options.

² Fair Housing Act, 42 U.S.C. 3608(d) (2012); *Otero v. New York City Housing Authority*, 354 F. Supp. 941 (S.D.N.Y. 1973), *aff'd in part and rev'd in part*, 484 F.2d 1122 (2d Cir. 1973).

³ Conn. Gen. Stat. § 8-37ee.

⁴ 42 U.S.C. 3604 (2012) (emphasis added).

⁵ *Texas Department of Housing and Community Development v. Inclusive Communities Project*, 576 U.S. ___, 23 (2015).

⁶ Conn. Gen. Stat. § 46a-64c(1); *Webster Bank v. Oakley*, 830 A.2d 139, 157 (Conn. 2003) ("It is well established that 'in addressing claims brought under both federal and state housing laws, we are guided by the cases interpreting federal fair housing laws ... despite differences between the state and federal statutes.'" (internal citation omitted)).

⁷ See e.g. *CHRO v. Sullivan Associates [Sullivan I]*, 739 A.2d 238 (Conn. 1999); *CHRO ex. rel. Rowley v. Ackley*, No. CV99550633, 2001 WL 951374 (Conn. Super. Ct. July 20, 2001).

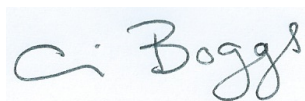
Westport's Record

Despite its obligation to take affirmative steps to further fair housing and avoid a disparate impact, it appears, instead, that Westport has repeatedly impeded efforts to increase its affordable housing stock, including going so far as to purchase properties proposed for affordable housing development in an effort to halt such development. Such actions have a disparate impact and expressly hinder, rather than affirmatively advance, fair housing. One such property remains undeveloped, despite Westport's claims to have purchased it in order to more effectively add affordable housing stock by constructing the homes itself.⁸ Furthermore, Westport has seen precious little multifamily construction of affordable units since the passage of Conn. Gen. Stat. § 8-30g in 1990. Approving the pending proposal for 122 Wilton Road would be a first step in rectifying this pattern.

Westport is in desperate need of a diverse housing stock that includes affordable housing disproportionately needed by Black, Latino, and single-parent families. The primary breadwinners in many of these families may well be teachers, nurses, or store clerks in Westport. Such housing is also needed by downsizing seniors and recent college graduates. It is also needed by Westport public housing residents whose incomes rise, disqualifying them for public housing but leaving them without other affordable housing options in Westport. Furthermore, under our state constitution, Art. I Sec. 20, and zoning enabling act, Conn. Gen. Stat. § 8-2, Westport also has a duty to zone to accommodate its fair share of the region's ongoing need for low and moderate income housing.

Westport's legal obligations are clear. Affirmative, intentional steps on the town's part to encourage affordable housing are necessary. Open Communities Alliance invites the town to meet to explore a range of strategies it could take to comply with these obligations – beginning with approval of the proposal at 122 Wilton Road.

Sincerely,



Erin Boggs, Esq.
Executive Director

Lisa Dabrowski, Esq.
Policy Analyst

cc: Ira Bloom, Esq.
Jeffrey Sussman, U.S. Department of Housing and Urban Development
Timothy Bennett Smyth, U.S. Department of Housing and Urban Development
Commissioner Evonne Klein, Connecticut Department of Housing

⁸ This alternative was discussed with regards to the Jaeger property, which the town purchased for \$4.2 million in 2001. The property now only includes a school parking lot and a community garden. Similarly, the town engineered the sale of the Westport Inn to a private party to achieve the same result. The town also proposed purchasing the site in question here, 122 Wilton Road.

Deputy Commissioner Nick Lundgren, Connecticut Department of Housing
Ndid Moses, Office of the U.S. Attorney - CT