The Intricacies of NIMBYism: Exclusionary Zoning and the Fair Housing Act in Connecticut

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Connecticut is one of the wealthiest states in the country, yet there is an alarming shortage of affordable housing across the state. The regulatory schemes of Connecticut municipalities only exacerbate the issue. Many towns and cities employ exclusionary zoning policies and regulations that make it difficult for lower-income households to reside in an area. A prominent example is single-family, two-acre zoning, which makes it difficult or even impossible to construct high density housing conducive to the creation of affordable housing. As a result of exclusionary zoning policies, Connecticut has effectively become economically segregated.

This begs the question of whether exclusionary zoning policies violate the Fair Housing Act, which prohibits housing discrimination. This Note argues that, under the Fair Housing Act’s two primary theories of liability, exclusionary zoning policies generally do not violate the Act because economic status is not a protected class under the Act. Still, the economic segregation caused by exclusionary zoning persists. The State’s primary remedy to the affordable housing problem, Connecticut General Statutes Section 8-30g, although well-intentioned, has failed to combat the issue. This Note explores the shortcomings of Section 8-30g and suggests an alternative remedy to the affordable housing crisis in Connecticut.
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INTRODUCTION

Since the enactment of the Connecticut Affordable Housing Appeals Act, or Connecticut General Statute Section 8-30g (Section 8-30g),1 designed to combat ever-increasing high housing costs,2 the state’s housing problem has only gotten worse. In recent years, four Connecticut cities ranked among the top one hundred cities with the highest eviction rates nationwide.3 Homelessness is on the rise for the first time in recent history.4 How could this be, given the statute’s aim to increase housing opportunity statewide?

To answer this question, one must first look to the statute’s function and the root of the housing problems it was intended to correct. Section 8-30g sets forth an appeals procedure triggered when a land use commission denies an affordable housing development application.5 Effectively, under the statute, the burden shifts to the municipality to demonstrate the necessity for denial of the application based on health and safety concerns.6 In doing so, the statute aims to ensure that affordable housing applications are only denied for proper reasons. In other words, the statute attempts to prevent municipalities from denying applications for “indeterminate reasons” such

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1 CONN. GEN. STAT. ANN. § 8-30g (West 2022).
5 See CONN. GEN. STAT. ANN. § 8-30g(f) (West 2022). See also Tondro, supra note 2, at 118 (describing the structure of Section 8-30g).
6 See id. § 8-30g(g) (West 2022). See also Tondro, supra note 2, at 119–20 (discussing burden-shifting under Section 8-30g).
as protecting “community character” or “incompatibility with the neighborhood.” These arguments contain strong overtones of a “not in my backyard” attitude, or “NIMBYism”—the “phenomenon in which communities oppose badly needed new housing.” Essentially, NIMBYs share an aversion to the changing nature of their communities. NIMBYism transcends political categorization, involving a wide range of voters from conservatives to older, left-wing environmentalists who oppose large-scale new development.

Generally, commentators have utilized the term NIMBY to describe older generations, although anyone could be a NIMBY. While many NIMBY arguments may allude to discriminatory justifications, NIMBYism is not necessarily rooted in racist, classist behavior. It would be speculative to assign other reasoning to a NIMBY attitude, but a desire to prevent a quieter, less densely populated town from transforming into a bustling suburb could exist without racist or classist overtones.

In Connecticut, NIMBYism takes the shape of objecting to multifamily developments in overwhelmingly single-family-zoned municipalities. As a Planning and Zoning Commissioner for the Town of Wilton, I have witnessed firsthand the NIMBYism that runs rampant in one of the wealthiest areas of the country. During my first campaign in 2019, I found it confusing that so many residents opposed development when many storefronts remained vacant and people my age were being forced out due to a severely deficient housing stock (and unaffordable rental rates for the few available options). At the time, my town was home to six retirement communities, yet it took me nearly six months as a recent college graduate to find a one-bedroom apartment to rent.

The desire to keep things as they are is not inherently immoral or unreasonable. However, an issue arises when maintaining the status quo means sustaining a system of economic segregation and racial imbalance. As I quickly discovered, the reason people my age were being forced out of town was because my town had no “affordable” housing, both in the context of Section 8-30g and as a general matter. Instead, my town is home, almost

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7 Tondro, supra note 2, at 116.
9 “NIMBY” refers to an idea that embodies a “not in my backyard” perspective.
11 See generally id. at 59–61.
12 See Vicki Been, City NIMBYs, 33 J. LAND USE & ENV’T L. 217, 218 n.1 (2018) (explaining that NIMBYism may not be rooted in racism or classism as some may believe).
13 Wilton is located in Fairfield County, the sixth-wealthiest county in the country. Colleen Kane, America’s 10 Richest Counties, CNBC (Sept. 13, 2013, 4:33 PM), https://www.cnbc.com/2012/04/26/Americas-10-Richest-Counties.html
This type of zoning, commonly referred to “exclusionary zoning,” serves as a substantial barrier to affordable housing. Much exclusionary zoning has roots in racism and intolerance, although it may seem like a predominantly classist tool.

Today, Connecticut remains, at minimum, economically segregated, with the nation’s elite concentrated in Fairfield County and the excluded lower-income population dispersed throughout the remainder of the state. With respect to the overt exclusion of residents seemingly based on race, one wonders whether exclusionary policies generally violate the Fair Housing Act (FHA). Because these policies do not explicitly discriminate based on race, one would look at whether these “facially neutral” policies have a disparate impact under the FHA.

This Note argues that because disparate impact poses a high legal hurdle, it is difficult to prove that exclusionary zoning actually creates enough of a disparate impact to clear this hurdle. However, restrictive zoning indisputably perpetuates a pattern of economic segregation and racial imbalance across communities in Connecticut. Even if courts found that exclusionary zoning warrants some type of remedy, the State’s primary remedy, Section 8-30g, and the self-prescribed remedies of some municipalities, are ineffective and unrealistic. A better solution to the affordable housing problem lies in the combination of rent caps, tax credits, and an increased mandatory affordability percentage across municipalities.

Part I provides the historical background to Connecticut’s exclusionary zoning problem. This Part highlights the racist underpinnings of previous zoning policies and explores the economic segregation that current zoning regulations have created. Part II analyzes the disparate impact analysis as applied to exclusionary zoning policies. Part II concludes that, although exclusionary zoning policies result in economically segregated geographical areas, the policies do not go far enough to violate the Fair Housing Act’s high legal standards. Part III discusses the State’s primary remedy to the economic segregation of exclusionary zoning, Section 8-30g. This Part describes the statute, its main failure (the “denominator problem”), and how developers have weaponized the statute. Part IV proposes an alternative solution to Section 8-30g. It further argues that a combination of rent control, a minimum affordability percentage, and tax credits to developers could induce affordable housing development in Connecticut. Finally, Part V turns

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15 Exclusionary zoning can be defined as zoning that prohibits “the building of least-cost forms of housing.” ROBERT C. ELLICKSON, AMERICA’S FROZEN NEIGHBORHOODS: THE ABUSE OF ZONING 5 (2022).
16 See infra Part I.
to the approaches other states have taken to respond to the affordable housing shortage.

I. HISTORICAL BACKGROUND AND CULTURAL CONTEXT

The Supreme Court found racial zoning unconstitutional more than a hundred years ago.\(^{18}\) Even in the absence of racial zoning,\(^{19}\) however, communities found ways to discriminate. Through covenants, homeowners adopted neighborhood-wide agreements to preclude the leasing and sale of property to Black people, Jewish people, and other people of color.\(^{20}\) The Supreme Court upheld the use of racial covenants in 1926,\(^{21}\) giving communities across the country the green light to refuse to sell or lease to certain racial groups. Thus, although racial zoning remained unlawful, communities had a back door avenue to ensure the existence of all-White communities through racial covenants. Racial covenants were not declared unenforceable until 1948,\(^{22}\) more than thirty years after the Supreme Court’s prohibition of racial zoning.\(^{23}\) Nevertheless, it remained legal for realtors and property owners to discriminate on the basis of race until the Fair Housing Act was passed by Congress in 1968,\(^{24}\) twenty years later.

Without racial covenants and zoning (and even after the passage of the Fair Housing Act), communities often turned to violence and scare tactics to keep their communities White.\(^{25}\) Violence in response to the integration of Black people and other persons of color, or “move-in violence,” has taken the shape of anything from breaking into and vandalizing homes before a Black family could move in to burning a cross on a Black family’s lawn.\(^{26}\)


21 See Corrigan v. Buckley, 271 U.S. 323, 331 (1926) (holding that racial covenants are constitutional).

22 See Shelley v. Kraemer, 334 U.S. 1, 20 (1948) (holding that racial covenants are unenforceable). Although the Supreme Court found covenants unenforceable, the Court notably refrained from declaring them unconstitutional.

23 Buchanan, 245 U.S. at 82.


26 \textit{Id.} at 53.
The passage of the Fair Housing Act “did not end the extralegal violence directed at minorities who had moved to white neighborhoods,” and incidents continued at least into the 1980s and 1990s.  

Intimidation and violence, along with various town/city ordinances and laws, allowed “sundown town[s],” or towns that “for decades kept African Americans or other groups from living [there] and [were] thus ‘all-white’ on purpose,” to continue to thrive across the country. Sundown towns existed everywhere from La Jolla, California, to Darien, Connecticut, and had a higher concentration in areas outside the South. As a result, cities had higher Black populations while suburbs grew to be “overwhelmingly white.” The demographic impact of sundown towns remains even now. For example, Darien, Connecticut, an identified sundown town, still has a population that is 83.5% White as of July 1, 2023. A few of the other suspected sundown towns in Connecticut include East Haven, Glastonbury, Greenwich, Litchfield, New Fairfield, Ridgefield, Weston, and Westport, all of which are still at least 75% White as of July 1, 2022.  

27 Id. at 52.  
29 LOEWEN, supra note 19, at 4. Aside from African Americans, sundown towns also excluded Jews, Chinese, Mexicans, and Native Americans. Id. at 125–26. The Connecticut town of Darien, a notable sundown town, was placed on the map when its antisemitic culture inspired a bestselling novel about the town’s exclusion of Jews. Id. at 126.  
30 Id. at 116. The Great Migration saw an influx of Black residents into Northern cities. Id. at 57–58. Accordingly, cities like New Haven, Connecticut, experienced an increase in Black residents. See ELICKSON, supra note 15, at 105.  
31 LOEWEN, supra note 19, at 116.  
The passage of zoning laws also provided towns with an avenue to exclude those they perceived as undesirable. Indeed, after the striking of “separate but equal” facilities, zoning and land use became the only legal option for municipalities to continue to exclude.  

The federal government, through the Federal Housing Administration, even “officially encouraged the use of zoning to generate race and class segregation.” Towns enacted strict zoning ordinances that precluded or substantially limited the construction of high-density housing and other buildings, otherwise referred to as “exclusionary zoning.” Exclusionary zoning ordinances can include minimum lot sizes, maximum height requirements, and use restrictions, such as limiting an area to single-family homes. Excessive land use and zoning regulations “exclud[e] poorer and minority residents by keeping housing unaffordable through limits on new construction.” These types of regulations shield higher-income towns from lower-income citizens seeking housing, effectively segregating municipalities by race and social class.


34 TROUNSTINE, supra note 18, at 39–40. Often, exclusionary zoning poses a larger problem than racial covenants because it binds entire municipalities rather than a handful of homeowners. ELLICKSON, supra note 15, at 167–68.

35 TROUNSTINE, supra note 18, at 93 (citations omitted).


37 See ELLICKSON, supra note 15, at 5.


39 Schleicher, supra note 36, at 1317–18. See also TROUNSTINE, supra note 18, at 24 (“A city that restricts the development of housing at the low end of income distribution (say, by implementing a one-acre minimum lot size requirement) will have a population with higher socioeconomic status and higher property values.”). ELLICKSON evidences the ways in which exclusionary zoning restricts population growth by utilizing the development of zoning ordinances with the city of Greenwich, Connecticut. See ELLICKSON, supra note 15, at 6–8.
Even today, in 2023, many areas of Connecticut remain economically and racially segregated, due in part to these zoning ordinances. In Connecticut the least inclusive area is Fairfield County, which is the wealthiest county in the state and the sixth-wealthiest county in the country. Of the twenty-three towns in Fairfield County, fifteen have a population that is at least 80% White.

On the surface, motivations behind and support for exclusionary zoning practices can be attributed to NIMBYism. Communities and elected officials have qualified their objections to construction of affordable housing with concerns for health and safety (e.g., disruption to traffic patterns, environmental damage, etc.), desires to maintain an area’s rural charm, concerns for property values, etc. A proper descriptor for this opposition is social class elitism, but “there [is] enough open racial intent behind exclusionary zoning that it is integral to the story of de jure segregation.” Because White homeowners buy into this elitism, their desire to live in homogenous communities feeds and sustains segregation.

In my experience as a Planning and Zoning Commissioner, many objections are wholly unrelated to the affordable zoning components of developments and instead align with concerns for the environment and health and safety, particularly given that Wilton contains a portion of the Norwalk River and a high percentage of wetlands. The question becomes whether these objections are considered pretextual in the context of the FHA, which Section II.A examines below.

II. EXCLUSIONARY ZONING SUSTAINS ECONOMIC SEGREGATION BUT DOES NOT HAVE A DISPARATE IMPACT

Under the Department of Housing and Urban Development’s (HUD) discriminatory effects law, a plaintiff may file a claim alleging a disparate impact on a protected class under the FHA or a segregative effect on the

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40 See infra Table I (detailing population demographics of former alleged sundown towns); Jacqueline Rabe Thomas, How Connecticut’s Richest Towns Fight Affordable Housing, MIDDLETOWN PRESS, https://www.middletownpress.com/middletown/article/How-Connecticut-s-richest-towns-fight-13871310.php (May 23, 2019, 10:01 AM).
41 TROUNSTINE, supra note 18, at 8. Although residential segregation does not stem solely from exclusionary zoning policies, these policies certainly exacerbate segregative conditions. ELICKSON, supra note 15, at 11.
42 Mashburn, supra note 17.
43 Kane, supra note 13.
44 See infra Table II (showing population data).
45 Thomas, supra note 40; LISA PREVOST, SNOB ZONES: FEAR, PREJUDICE, AND REAL ESTATE 11, 111 (2013). These arguments have existed for more than one hundred years since the inception of zoning practices. See TROUNSTINE, supra note 18, at 78 (describing the arguments in favor of zoning practices as these practices spread throughout the 1920s).
46 ROTHSTEIN, supra note 18, at 48. However, it should be “underscored [that] the initial adoption of zoning was not driven by the threat or presence of large numbers of immigrants or people of color… Economic factors appear to have played a more important role.” TROUNSTINE, supra note 17, at 91.
47 See TROUNSTINE, supra note 18, at 118.
community.  Although exclusionary zoning policies may generally cause a pattern of economic segregation, economic status is not a protected class under the FHA, and disparate impact and segregative effect claims relating to exclusionary zoning would fail.

A. Proving Disparate Impact

In Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., the Supreme Court found that disparate impact claims are cognizable under the FHA. However, in the same breath, the Supreme Court established a “robust causality requirement,” attempting to limit disparate impact liability cases. The Court’s causality requirement mandated that the plaintiff identify “a defendant’s policy or policies causing [the racial] disparity.” According to Justice Kennedy, who authored the opinion, the new requirement “protects defendants from being held liable for racial disparities they did not create.” Inclusive Communities raised the already high legal standard to prove a prima facie disparate impact claim.

Following Inclusive Communities, a substantial number of courts who have considered disparate impact claims have held that a heightened burden is necessary simply to advance beyond the prima facie stage of the disparate impact analysis. Unsurprisingly, disparate impact claims typically fail to reach the new, heightened burden. Since the early 1970s, “appellate courts have had little difficulty disposing of all manner of disparate impact claims under the FHA.” The success rate of disparate impact claims in appellate courts has decreased since the 1970s, and in the 2000s, the success rate was a mere 8.3%. Indeed, as discussed above, plaintiffs have failed to meet the heightened disparate impact burden following the Inclusive Communities decision in 2015.

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48 24 C.F.R. § 100.500(a).
49 See 42 U.S.C. § 3604(b) (listing protected classes, which do not include economic status).
50 576 U.S. 519, 545–46 (2015). The disparate impact test requires that a plaintiff establish evidence that a policy or decision causes a disparate impact on a protected class under the FHA. Id. at 527. A defendant may counter the plaintiff’s prima facie showing by asserting that the challenged policy was necessary to achieve a valid interest. Id. The valid interest can be rebutted if the plaintiff demonstrates that there is an alternative practice which would serve the defendant’s needs but cause less of a disparate impact. Id.
51 Id. at 542.
54 Id.
56 Id. at 47.
58 Id. at 393–94.
59 Callies & Simon, supra note 55, at 47.
Because the Supreme Court only recently recognized that disparate impact claims are cognizable under the FHA, few courts have had the opportunity to assess whether certain policies and practices are considered to have a disparate impact on protected classes. In *MHANY Management Inc. v. County of Nassau*, the Second Circuit found that a “rezoning policy disproportionately decreased the availability of housing for minorities as compared to whites, thereby satisfying the robust causality requirement to state a prima facie case of disparate impact.” However, other challenges before appellate courts have failed to meet the Court’s causality requirement, even though disparities may have existed as a result of the subject policy or practice.

If a court were to determine that exclusionary zoning has a disparate impact on individuals based on the protected category of race, municipalities could rebut by showing a substantial, legitimate, and nondiscriminatory purpose behind the regulations. Similar to causality, few courts have had the opportunity to determine what is considered “substantial, legitimate, and nondiscriminatory” in the context of the FHA. In *MHANY*, the Second Circuit held that maintaining the character of the neighborhood is not a substantial and legitimate purpose, but “increased traffic and strain on public schools” are legitimate interests. The Second Circuit further held that certain words, such as “character,” “represented acquiescence to race-based animus.”

This raises concerns for Connecticut municipalities as one of the primary objections to affordable housing developments is the desire to preserve an area’s character and charm. Although proving discriminatory intent is not a requirement to make a disparate impact claim, a showing of discriminatory intent could be useful in arguing that a municipality’s

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60 See *Inclusive Cnty., 576 U.S.* at 545–46 (“The Court holds that disparate-impact claims are cognizable under the Fair Housing Act . . . .”).
62 See *City of Los Angeles v. Bank of Am.*, 691 F. App’x 464, 465 (9th Cir. 2017) (unpublished) (holding that the city failed to show a connection between racial disparity and a facially neutral policy); Boykin v. Fenty, 650 F. App’x 42, 45 (D.C. Cir. 2016) (unpublished).
64 *MHANY*, 819 F.3d at 620.
65 Id. at 611.
67 See *Inclusive Cnty.*, 576 U.S. at 524–25 (explaining that plaintiffs bringing disparate-impact claims are challenging practices that have a disproportionately adverse effect on minority groups and are unjustified by legitimate rationale).
asserted purpose is a pretext. Some of the other concerns cited in response to affordable housing proposals by Connecticut homeowners and municipalities include overcrowding of schools, environmental protection, and strain on municipal infrastructure/resources, which parallel the safety concerns accepted by the MHANY court as substantial and legitimate. More specifically, in several towns, limited sewer access serves as a barrier to development and connection to local sewer lines could be detrimental to the surrounding environment. Much of Southern Connecticut contains protected wetlands areas which also serve as a barrier to development. In addition, several municipalities along the coastline are home to critical habitats for endangered species.

Even if municipalities successfully demonstrate a substantial, legitimate, and nondiscriminatory purpose behind restrictive zoning regulations, a plaintiff could rebut by showing that the asserted purpose is a pretext and there is a less discriminatory way to achieve the purpose. For asserted interests such as preserving an area’s character and charm, a plaintiff may be able to demonstrate pretext fairly easily. Considering their historical context, a court might find that words such as “character” and “charm” are code words similar to those in MHANY. For other interests, such as preserving the local environment, demonstrating pretext may be more

68 Demonstrating that a municipality had a discriminatory intent could assist in proving that a policy or practice is not facially neutral.
69 HOLLERAN, supra note 10, at 3.
70 See, e.g., Grace Duffield, New Canaan Commission to Vote on Weed Street Development Soon, NEW CANAAN ADVERTISER (Sept. 29, 2022, 3:58 PM), https://www.ncadvertiser.com/news/article/New-Canaan-commission-to-vote-on-Weed-Street-17472285.php (reflecting storm water concerns); Wilton Plan Commission Mem’r, Additional Letters (10-17-22) #1, TOWN OF WILTON, CONN. (Oct. 17, 2022), https://www.wiltonontc.com/sites/g/files/vyhlf10026/uploads/additional_letters_10-17-22_11_am.pdf (reflecting residents’ concerns regarding potential infrastructure issues in connection with a proposed sewer extension for a larger development than the zoning of the area would permit); MHANY, 819 F.3d at 591 (explaining that defendant’s records show citizens’ raising concerns about traffic congestion and an increased number of schoolchildren).
71 MHANY, 819 F.3d at 613.
72 Thomas, supra note 40.
76 CONG. RSLCH. SERV., supra note 63, at 6 n.37.
77 See MHANY Mgmt., Inc. v. Cnty. of Nassau, 819 F.3d 581, 609 (2d Cir. 2016) (finding that code words such as “character” were demonstrative of racist intent).
78 See supra Part I (explaining the history behind discriminatory zoning practices).
difficult or even impossible. As a result it is unlikely that a disparate impact claim based on exclusionary zoning would survive a court’s analysis.

B. Exclusionary Zoning Has a Segregative Effect, But Plaintiffs Would Face Difficulty in Recovering

A claim under the segregative effect theory would also likely fail. The segregative effect test requires a plaintiff to identify a challenged practice, demonstrate through statistical evidence that the practice amplifies segregation to a significant degree, and prove that the challenged practice actually caused the segregative effect. The challenged practice here would be exclusionary zoning. Perhaps the most prominent example of exclusionary zoning is widespread single-family zoning. Under the segregative effect analysis, one would need to prove, through statistical evidence, that exclusionary zoning exacerbates segregation. The effects of single-family zoning are multi-faceted. Essentially, the zoning ensures that individuals who either cannot afford or do not have the desire to purchase a home are precluded from residing in the zoned area. In other words, single-family zoning results in de facto economic segregation. While not a protected class in the context of the Fair Housing Act, socioeconomic status strongly correlates to race. Accordingly, in Connecticut towns with predominantly single-family zoning, like Darien, New Canaan, Ridgefield, and Wilton this translates to an overwhelmingly White population because of economic barriers that preclude BIPOC groups from residing in towns like these.

79 In contrast to an argument against a pretextual classification of “charm” and “character,” which likely cannot be supported by evidence (and would be pretextual under MHANY), an argument that a development may cause irreparable environmental harm could be substantiated by evidence.


81 Your Zoning Dictionary, DESSEGREGATE CT, https://www.dessegregatect.org/definitions (last visited Feb. 8, 2024). Although exclusionary zoning encompasses more than simply single-family zoning, for brevity, single-family zoning will be used for this analysis.

82 See 42 U.S.C. § 3604 (listing protected classes, which do not include socioeconomic status).


85 See infra Table II (showing population data).

86 The median sold price for a single-family home in Fairfield County is $1.8 million. Fairfield County Market Report, WILLIAM PITT (Sept. 2023), https://www.williampitt.com/community-real-
Beyond affecting an individual’s ability to reside in certain towns, single-family zoning also affects one’s access to education. In towns which are predominantly zoned for single-family occupancy, property tax revenue is often higher, meaning that schools in these areas can receive more funding. As a result, school rankings for municipalities with exclusionary zoning are much higher than in municipalities with less restrictive zoning. Graduation rates generally reflect a similar pattern. Likewise, municipalities with exclusionary zoning can provide more funding to social services than municipalities with less restrictive zoning, including funding for much-needed mental health programs. As a result, exclusionary zoning not only impacts an individual’s ability to reside in a community, but it also

See id. at 9.

While the mill rates in primarily single-family-zoned towns are not significantly higher than in other municipalities (and in some cases, are actually lower), higher area median incomes ensure that property tax revenue in these towns remains much higher. See generally FY 2022-2023 Mill Rates, CT GOV (Aug. 8, 2022), https://portal.ct.gov/-/media/OPM/IGPP-Data-Grants-Mgmt/FY-22-23-ADM MillRates-882022.pdf (reflecting the mill rates for all Connecticut municipalities).

Best Connecticut High Schools, U.S. NEWS & WORLD REP., https://www.usnews.com/education/best-high-schools/connecticut/rankings (last visited Dec. 20, 2023) (reflecting the following state rankings: Stamford High School at #90, Brien McMahon High School of Norwalk, CT, at #112, East Hartford High School at #141, Wilbur Cross High School of New Haven, CT, at #142, Central High School of Bridgeport, CT, at #165, Bassick High School of Bridgeport, CT, at #171-198, Warren Harding High School of Bridgeport, CT, at #171-198; as compared to Darien High School at #4, New Canaan High School at #8, Greenwich High School at #9, Ridgefield High School at #112, and Wilton High School at #17).

Id. (reflecting the following graduation rates: East Hartford High School—95%, Wilbur Cross High School of New Haven, CT—83%, Central High School of Bridgeport, CT—77%, Bassick High School of Bridgeport, CT—67%, Warren Harding High School of Bridgeport, CT—69%; as compared to Darien High School—99%, New Canaan High School—99%, Ridgefield High School—99%, Greenwich High School—97%, Wilton High School—98%).

Some towns that employ exclusionary zoning have a higher per capita income as compared to municipalities that do not. For example, the per capita income in 2020 for Darien, New Canaan, and Wilton (all of which are dominated by single-family zoning), was $129,829, $114,884, and $92,796, respectively, while the per capita income for Bridgeport and Stamford was $24,430 and $56,283. STATE OF CONN., OFF. POL’Y & MGMT., MUNICIPAL FISCAL INDICATORS: FISCAL YEARS ENDED 2016-2020 B-3 to B-4 (July 2022), https://portal.ct.gov/-/media/OPM/IGPP/munfinstr/Municipal-Fiscal-Indicators/Municipal-Fiscal-Indicators-2016-20-Final-Aso07-28-22.pdf. With a higher per capita income, a municipality has more economic resources to devote to areas, such as by providing social services.

creates an imbalance of resources\textsuperscript{92} and precludes BIPOC groups from accessing much-needed resources.

Arguably, then, single-family zoning causes racial and economic homogeneity and appears to disproportionately affect racial-minority groups, especially given its historical context. However, although racial imbalance in a community may result from past discrimination, the Supreme Court has stated that racial imbalance is not unconstitutional.\textsuperscript{93} To satisfy the segregative effect test, the disparity must be linked to the challenged practice.\textsuperscript{94} The problem (aside from lack of statistical evidence) is that municipalities that employ exclusionary zoning practices discriminate against anyone below a certain income threshold, rather than explicitly discriminating based on race. Economic segregation may correlate with racial segregation, but this showing would likely fail to meet the requirements of the segregative effect test.

As causality between facially neutral exclusionary zoning regulations and their disproportionate effect on protected groups may not be demonstrable, it is unlikely that a plaintiff could prove that these regulations have a disparate impact or segregative effect under the FHA. Exclusionary zoning undeniably created and continues to sustain a system of economic segregation, but because socioeconomic status is not a protected class within the confines of the FHA, there is currently no available remedy.

III. CONNECTICUT’S CURRENT SOLUTION TO THE ECONOMIC SEGREGATION OF EXCLUSIONARY ZONING

Even though the economic segregative effects of exclusionary zoning appear obvious, there is no federal answer to this problem. A complete overturn of all exclusionary zoning policies would be both unrealistic and violative of the Zoning Enabling Act.\textsuperscript{95} As a result, states have explored other ways to alleviate the effects of exclusionary zoning that allow municipalities to create and enforce their own regulations. Connecticut’s main solution to its housing problem, Section 8-30g, is both ineffective and

\textsuperscript{92} See HOLLERAN, supra note 10, at 60 (explaining that during the 1960s, new suburban communities could “use their property taxes for their exclusive benefit, ending redistributive elements of the prior system that existed when the American city was less fractured”).

\textsuperscript{93} See Dayton Bd. of Educ. v. Brinkman, 443 U.S. 526, 531 n.5 (1979) (“Racial imbalance[] . . . is not per se a constitutional violation . . . ”); Freeman v. Pitts, 503 U.S. 467, 494 (1992) (racial imbalance in student attendance zones is not unlawful); Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 750 (2007) (Thomas, J., concurring) (“Because racial imbalance is not inevitably linked to unconstitutional segregation, it is not unconstitutional in and of itself.”).


\textsuperscript{95} See generally CONN. GEN. STAT. ANN. §§ 8-1–8-13 (West 2023). An overturn of municipal zoning policies would directly violate the Connecticut Standard Zoning Enabling Act, which allows municipalities to create their own zoning regulations. See generally id.
unrealistic and has morphed into a weapon with which developers threaten municipalities.  

A. Affordability Under Conn. Gen. Stat. § 8-30g

The main solution created by the state is Connecticut General Statutes Section 8-30g, enacted in 1989, which “directly addresses, although largely ineffectually, issues of exclusionary zoning.” Under Section 8-30g, “Connecticut municipalities in which less than 10% of the housing stock is affordable must allow affordable or mixed-income housing proposals to be constructed unless they can prove . . . that the rejection is necessary to protect substantial public interests in health, safety or other similar matters.” Once a town meets the 10% threshold, it is exempt from Section 8-30g—meaning that the town is not required to approve all affordable housing proposals, even if the proposals do not comply with town regulations. The exemption was incorporated by drafters for “administrative reasons”—that is, municipalities that meet the 10% threshold no longer have to justify denying applications for “proper reasons.” In the context of the statute, “affordable” is calculated using the area median income (AMI) and the statewide median income (SMI), whichever is lower.

The 8-30g Statute Builds Housing Opportunities and Should Remain Unchanged


The 8-30g Statute is Connecticut’s Affordable Housing Appeals Procedure Law (Oct. 18, 2022, 3:27 PM), https://ctmirror.org/2022/10/18/ct-8-30g-affordable-low-income-housing-rent-cost-of-living/. Towns may also obtain relief from the confines of Section 8-30g through receipt of a four-year moratorium on Section 8-30g applications by constructing a certain number of affordable units, but for the sake of brevity, this Note focuses on the 10% exemption. See CONN. GEN. STAT. ANN. § 8-30g(l) (West 2022) (describing the moratorium requirements and process).

Tondro, supra note 2, at 121. It is notable that Mr. Tondro, who was one of the drafters of Section 8-30g, stated that “[t]he Act would have fared better if it had not exempted anyone from the statute under any circumstances.” Id.  

CONN. AGENCIES REGS. § 8-30g-8(a) (2022). To calculate the maximum monthly housing payment, the median income (the lesser of the state median income or the area median income) is adjusted based on family size and then multiplied by 80%. See id. Next, the number is multiplied by 30% and again by twelve to determine the maximum monthly housing payment. See id.  

The median family income in 2022 dollars for the period 2018–2022 were as follows for Darien, New Canaan, Westport, and Wilton respectively: $250,000+, $167,614, $242,868, and $230,545, and while the Connecticut median household income value in 2022 dollars for the period 2018–2022 was $90,213. QuickFacts: Wilton Town, Western Connecticut Planning Region, Connecticut; Darien Town, Western Connecticut Planning Region, Connecticut; Westport Town, Western Connecticut Planning Region, Connecticut; New Canaan CDP, Connecticut; Connecticut, U.S. CENSUS BUREAU,
these towns, if the AMI were utilized rather than the SMI, the threshold income to trigger applicability for affordable housing would be over $160,000 at minimum, which is nearly double the SMI.

For a development to be considered “affordable” under Section 8-30g, it must set aside 30% of its units as “affordable” for a period of forty years. Unless the development violates public health and safety, a town must approve a Section 8-30g proposal. Both traffic and environmental impacts have been upheld as legitimate reasons for denial under Section 8-30g. Essentially, Section 8-30g provides developers with a blank check with respect to design, height, traffic congestion, parking, etc., as long as 30% of a development is designated “affordable.”

B. The Denominator Problem of Section 8-30g

At face value, Connecticut General Statutes Section 8-30g appears to be a valid solution to the affordable housing problem in Connecticut. However, although the statute was well-intentioned, it is impractical for many towns across the state, particularly in Fairfield County. As discussed, to become exempt from Section 8-30g, a town must demonstrate that 10% of its housing stock is affordable. Ten percent is not a high number, but the problem arises when multiple Section 8-30g developments are constructed. As more developments are built, the denominator for the calculation goes up and even though more affordable housing would exist, the proportion of affordable to non-affordable housing would still be too low to meet the 10% threshold. In other words, “it is a virtual mathematical impossibility for most Towns to ever achieve 10% of their housing stock as affordable.” Indeed, in 2022 only twenty-nine municipalities (out of 169 total) met the 10% threshold. This is two fewer municipalities than in 2002, when thirty-one

https://www.census.gov/quickfacts/fact/table/darientownfairfieldcountyconnecticut,newcanaantownfairfieldcountyconnecticut,wiltontownfairfieldcountyconnecticut,westporttownfairfieldcountyconnecticut,CT/INC110220#INC110220 (last visited Feb. 4, 2024).

103 Calculated using the AMI for Westport, CT (the lowest of the four highest AMIs in Fairfield County).
104 U.S. CENSUS BUREAU, supra note 103.
105 CONN. GEN. STAT. ANN. § 8-30g (West 2022).
106 Id.; Affordable Housing in CT’s Elections, supra note 100.
110 Fuzzy Math, supra note 109.
municipalities met the 10% threshold.113 Over the thirty-four years since the enactment of Section 8-30g, consistently less than 20% of Connecticut municipalities have been able to meet the 10% threshold.114

To visualize: in 2021, the Town of Wilton contained 6,627 housing units.115 Thus, in order to become exempt from Section 8-30g, Wilton would need to designate 10%, or roughly 660, of the housing units as “affordable.” In 2022, 3.58% of the housing stock in Wilton was designated as “affordable.”116 Since the inception of my service on the Wilton Planning and Zoning Commission in December 2019, the Commission has approved 210 apartment units.117 For ease of illustration, assume that none of these 210 units contributes to the 6,627 number and do not affect the 3.58% affordability rate. An affordability rate of 3.58% of the housing stock in 2021 would translate to approximately 237 units. Even if the developments the Commission approved had all been considered affordable under Section 8-30g, meaning that 30% of the 210 newly constructed units (63 units), were designated as affordable, the new number of housing units in town would be 6,837 and the new number of affordable units would be 300 units. Thus, the new affordability percentage would be 4.39%, less than one percentage point higher than before.

One could argue that these developments are too low-density to meaningfully contribute to the affordability percentage. However, to put it in perspective, even if the Commission approved a special permit application for a 1,000-unit Section 8-30g development (five times the amount of housing units the Commission approved over the last three years), meaning that 333 of the units would be “affordable,” the new number of housing units in town would be 7,627 and the number of affordable units would be 570—only 7.9% of the housing stock, still below the 10% threshold.

To further illustrate the lack of feasibility, imagine that developers designated 100% of the 210 recently approved units as affordable. This would bring the number of affordable units in town to 447 units, or 6.50% of the housing stock. Even in this scenario, where 210 affordable units and zero market-rate units are constructed, the town would still be unable to meet

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116 2022 Affordable Housing Appeals List – Exempt Municipalities, supra note 112.
the 10% threshold under Section 8-30g. Indeed, to reach the 10% threshold, a 500-unit, 100% affordable development would need to be constructed.

Another issue plaguing Section 8-30g is that in order to meet the 10% threshold, developers must actually want to create Section 8-30g developments. One of the drafters of Section 8-30g acknowledged that the statute “relie[s] on the market sense of the builder as a surrogate for the affordable housing need in a town.” Yet the statute was enacted in 1989, and some municipalities have not seen construction of a Section 8-30g development by a private developer in over twenty years. The reason behind the lack of Section 8-30g developments is almost certainly monetary—in towns like Wilton, where the median rent is around $2,300, renting out 30% of a development at a statutorily “affordable” rate, or around $1,600, would put developers at a loss of around $700 per unit per month. For a multi-hundred-unit development, this adds up quickly. In a 200-unit building with sixty-seven affordable units, this would be a difference of over $40,000 per month and $480,000 per year.

Indeed, for some developers, designating any more than 10% of a proposal’s units as “affordable” can make a project “economically unfeasible.” If developers do not wish to create affordable housing developments (due to economic considerations or otherwise), a town’s hands are tied when faced with new development proposals—if multifamily construction is approved and it is not developed as approved, a town will be unable to meet the 10% threshold under Section 8-30g calculations. To successfully establish affordable housing, there must be some incentive to developers to create these types of developments. For now, developers remain averse to affordable units and have attempted to use Section 8-30g proposals unless their hands are tied when faced with new development proposals if multifamily construction is approved and it is not at least 30% affordable, the development worsens the denominator for Section 8-30g calculations. To successfully establish affordable housing, there must be some incentive to developers to create these types of developments. For now, developers remain averse to affordable units and have attempted to use Section 8-30g proposals unless their hands are tied when faced with new development proposals if multifamily construction is approved and it is not at least 30% affordable, the development worsens the denominator for Section 8-30g calculations.

118 Tondro, supra note 2, at 125.
120 Register to Testify for a Public Hearing on 8-30g (Feb. 28), State Rep. Tom O’Dea (Feb. 24, 2023), https://www.ethousegop.com/odea/2023/02/24/rep-odea-register-to-testify-for-a-public-hearing-on-8-30g-feb-28/. A prominent pro-housing organization, Desegregate Connecticut, suggests that § 8-30g has not seen success in certain areas of the state due to “fierce opposition from current residents.” Connecticut Land Use Laws, Desegregate CT, https://www.desegregatect.org/laws (last visited Feb. 10, 2024). While this partially rings true, municipalities cannot approve § 8-30g proposals unless developers actually submit § 8-30g proposals.
122 The calculation for “affordable” rent is (SMI * 80%) + 10% = 1671 (using the SMI of $83,572). See Conn. Agencies Regs., § 8-30g-8(a) (2022); QuickFacts, supra note 103.
123 Heather Borden Herve, P&Z Sees Two POCD-Friendly High-Density Housing Proposals, Including One for Melissa & Doug Property, Good Morning Wilton (Feb. 12, 2021), https://goodmorningwilton.com/pz-sees-two-pocd-friendly-high-density-housing-proposals-including-one-for-melissa-doug-property/; Several towns in Connecticut have a minimum affordability rate for new construction of at least 10 to 15%. See, e.g., Darien, Conn., Zoning Regs., § 583 (2022) (reflecting a 14% affordability rate); New Canaan, Conn., Zoning Regs., § 7.6(C)(3)(a) (2023) (reflecting a 15% minimum affordability rate); Westport, Conn., Zoning & Subdivision Regs., § 19A-1 (2022) (reflecting a 20% minimum affordability rate, along with a mandate workforce housing rate of 10%); Wilton, Conn., Zoning Regs., § 29-6.E. (2023) (reflecting a 10% minimum affordability rate in more populous zones of the town).
in their favor—not as a financial tool, but as a weapon to beat municipalities into submission with respect to regulation.

C. Connecticut General Statute Section 8-30g as a Sword to Slay the Beast of Regulation

Perhaps the least attractive feature of Section 8-30g to municipalities is the unrestricted freedom that the statute awards to developers with respect to height, parking, architecture, etc. Essentially, Section 8-30g functions as a means for developers to circumvent regulation and build whatever they want, so long as the development does not offend “public interests in health [and] safety.” “Health and safety,” although undefined by Section 8-30g, has been held to encompass topics as diverse as traffic all the way to wetlands concerns. This statutory language has the effect of inciting fear that developers whose special permit applications for multifamily developments have been denied will return to a commission with an even larger development that contains 30% affordable housing. In other words, there is ample fear that “an applicant can ‘blackmail’ a town into accepting its development proposal, even if it is not one for affordable housing, by threatening to withdraw the subject application and resubmit an affordable housing application.” Private developers may be more likely to utilize this type of “blackmailing.”

Consider a recent situation before the Town of Wilton’s Planning and Zoning Commission. The Commission recently underwent the process of

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124 See supra Section III.A.
125 See CONN. GEN. STAT. ANN. § 8-30g(g) (West 2022) (stating that a commission must prove that denial of an affordable housing development is “necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider”).
126 See id. § 8-30g (failing to contain a definition for “health [and] safety”).
128 See Tondro, supra note 2, at 128 (describing how developers use § 8-30g to “blackmail” towns into accepting their development proposals).
129 Id.
131 See Tondro, supra note 2, at 129 n.57 (stating there is “little actual evidence” of developers abusing the act).
creating a master plan of the town center\(^{132}\) (known by residents as "Wilton Center"\(^{133}\)), which substantially altered the regulations in that area of town, including the height regulation. Despite the public’s complete awareness of this ongoing master-planning process, in October 2022, the Commission received an application for a four-story apartment building in Wilton Center.\(^{134}\) The building’s height did not comply with the town’s current regulations, which permit a maximum height of three stories,\(^{135}\) so the applicant requested a special permit amending the regulation.\(^{136}\) Nearly every member of the Commission expressed support for the building’s design, including the four-story height,\(^{137}\) yet Commissioners were concerned about the timing of the proposed regulation change given the ongoing master-planning process.\(^{138}\) The Commission repeatedly expressed its concerns about changing the height regulation prior to issuing new regulations as part of the master plan, as this would effectively nullify any in-progress regulations the master-planning subcommittee prepared.\(^{139}\) If the proposed text change was not approved, the application would not have been able to proceed. In response, the developer threatened to bring the application back before the Commission as a Section 8-30g development with five stories, which would permit him to circumvent the current regulation that allows for a maximum of three stories.\(^{140}\) When it became clear that the Commission would not approve the text change to the regulation, the developer withdrew the application before a denial could be


\(\text{133}\) See id. (describing the “Wilton Center Area” as “the [t]own’s central downtown core, Wilton Center, starting at the intersection of Ridgefield Road (Route 33) and Old Ridgefield Road stretching south to Wolfpit Road”).


\(\text{135}\) WILTON, CONN., ZONING REGULS. § 29-6.E. (July 10, 2023).

\(\text{136}\) Wilton Plan. & Zoning Comm’n, supra note 134.

\(\text{137}\) Wilton Plan. & Zoning Comm’n, Wilton Planning and Zoning Commission Minutes, TOWN OF WILTON, CONN. (Feb. 13, 2023), https://www.wiltonct.org/sites/g/files/vyhif10026/f/minutes/pz_minutes_feb13_2023_0.pdf. Of the nine Commissioners, the only Commissioner opposed to the proposed four-story height was the Chair.

\(\text{138}\) Id.


\(\text{140}\) Wilton Plan. & Zoning Comm’n, Wilton Planning and Zoning Commission Meeting, ZOOM at 1:09:45 (Jan. 9, 2023), https://us02web.zoom.us/rec/play/JvrbBMxVutdFaZGT7YatH46ZwGPdBD8vGDv_2JxI0JBSx2-UHBrMt2A17trwq227M9SmmGVuo.NTzKBa6ELo7VQg?continueMode=true&x_zm_rtaid=VD57uX0Zq5iGAuZzvVvR.A.1678145643772.ed129602a6b52fa1d265b6a460177edf%26x_zm_rhtaid=454.
THE INTRICACIES OF NIMBYISM

issued. Then, as threatened, the developer returned with a Section 8-30g proposal.

In a different scenario, a Darien developer applied and obtained approval for a new three-story apartment building. Residents complained that the approved development was “intrusive” and sued the town to block the development. Rather than wait for a judicial decision, the developer expressed that he would submit a Section 8-30g application for the same lot—with five stories and “up to 90 units. That’s two stories taller and 30 units more than the original project.” Ultimately, the Town of Darien settled the resident suit, and the development was scaled down from sixty units to fifty-seven units (a mere three-unit reduction).

Aside from these examples, however, concrete proof of these threats is far from abundant. Around two decades ago, a survey of thirteen town planners in the New Haven regional planning area by Terry Tondro, one of the drafters of Section 8-30g, revealed that although several planners reported Section 8-30g threats by developers, “only one planner was able to give particulars.” More recent data has not been forthcoming.

IV. BETTER ALTERNATIVES TO CONNECTICUT GENERAL STATUTES

SECTION 8-30G

Considering the “denominator problem” and the anecdotal “blackmail problem,” it is quite evident that Section 8-30g does not function as the drafters intended and has not proven over the thirty-four years since its enactment that it can solve the affordable housing/exclusionary zoning problem. While exploring different methods to effectuate more affordable housing (both generally speaking and “affordable” within the definition of

141 Wilton Plan. & Zoning Comm’n, Wilton Planning and Zoning Commission Meeting, ZOOM at 1:43:46 (Feb. 27, 2023), https://us02web.zoom.us/rec/play/7YsvKoMxXsoIYeCoWjM2tCe0M5GN32n2pKNXHLeW8H1l-gc_hhs0FB0BBl0ZUuIFPeNrrx.9HkvyU46DERDP5Y6?continueMode=true&x_cm_rtaid=VD1SuX0ZrSqGAUsZvVrA.1678145643772.ed129602a52fa1d26566a460177edf&x_cm_rhtaid=454. At the meeting just prior, a majority of the Commissioners expressed that they would deny the text amendment. Wilton Plan. & Zoning Comm’n, supra note 137.


143 Angela Carella, Facing a Lawsuit, Developer in Darien Opts for 8-30g Housing, CT EXAMINER (May 5, 2022), https://ctexaminer.com/2022/05/05/23587/.

144 Id.

145 Id.


147 Tondro, supra note 2, at 128.
Section 8-30g), it became clear that the best solution is a combination of rent controlled units, a minimum affordability percentage, and tax credits. Alone, neither rent control, affordable housing, nor tax credits would solve the problem. Minimum affordability percentages have demonstrably failed to satisfactorily increase affordable unit numbers. Together, though, these factors would provide developers with an incentive to create more affordable housing, prevent detrimental rent increases that serve as de facto evictions and displace tenants, and allow low and middle-income residents greater access to housing that they can actually afford.

A. Rent Caps on Preexisting Developments

One of the issues plaguing new multifamily developments in “snob-zoned” areas is that the established rents are priced for luxury consumers. Consequently, although new developments contain a mandated number of affordable units, low and middle-income populations are still priced out of wealthier towns despite the increase in housing stock. Aside from dedicating a few “affordable” units to economically disadvantaged households, these “luxury” developments draw in the exact types of people who already populate these towns. This only perpetuates the economically segregative pattern that exclusionary zoning established years ago. Unless you are poor enough to meet the income requirements for the “affordable” units or wealthy enough to afford the luxury rent price tags, you are precluded from residing in these towns.

A classic NIMBY response to this scenario would be that it is not a municipality’s problem if someone cannot afford to live in town. However, this argument falls flat with respect to town employees, including teachers, police officers, administrative staff, etc. In many Connecticut towns, municipal employees cannot even afford to live in the towns employing them. Aside from raising municipal salaries, which would result in an increase in property taxes (negating the NIMBY “not our problem” argument), there is not much to be done to allow employees to reside in town unless exorbitant rents are lowered, or more affordable housing is created. At least one town, Darien, attempted to increase the housing stock for municipal employees, who make too much to qualify for “affordable”

148 See supra Section III.B. Despite minimum affordability requirements, towns still fail to meet the 10% threshold to become exempt from Conn. Gen. Stat. § 8-30g.  
149 Scholars sometimes refer to exclusionary zoning as “snob zoning.” See, e.g., PREVOST, supra note 45, at x.  
149 See, e.g., DARIEN, CONN., ZONING REGULS. § 583 (1999) (reflecting a 14% affordability rate); NEW CANAAN, CONN., ZONING REGULS. § 7.6.C.3.a. (2021) (reflecting a 15% minimum affordability rate); WESTPORT, CONN., ZONING REGULS. & SUBDIVISION REGULS. § 19A-1 (2022) (reflecting a 20% minimum affordability rate, along with a mandate workforce housing rate of 10%); WILTON, CONN. ZONING REGULS. § 29-4.D(6)(n) (2023) (reflecting a 10% minimum affordability rate in more populous zones of the town).  
units. Darien modified its zoning regulations to give preference for affordable housing to several “priority populations,” including “Darien residents who volunteer as first responders; Darien public employees; Darien residents who work in town; Darien residents; nonresidents who work in Darien; and former residents who want to move back.” 152 As a result, the Department of Justice investigated the town for a possible Fair Housing violation over concerns that the preferences for “priority populations” were discriminatory as they potentially favored certain groups over others. 153 Before the Department issued any determination, Darien again modified the regulation to omit the “priority populations” language. 154

In light of this situation, the simplest way to provide affordable housing (generally speaking) to low and middle-income populations who earn an income higher than that permitted to qualify for affordable housing is to institute rent control. The Connecticut State Legislature recently considered a bill to cap the rent, Connecticut House Bill 6588, 155 which sought to establish a maximum annual rent increase of “four [percent] plus the consumer price index.” 156 Landlords and tenants alike provided hours of testimony during the public hearing, but the bill ultimately did not reach a vote in the Connecticut General Assembly. 157 Instead, the Housing Committee elected to pass a bill which “creates task forces to study the effects of evictions on landlords and rent stabilization policies.” 158 It remains to be seen whether these task forces will prove helpful.

The failure of House Bill 6588 is that it applied to all rent statewide, which is simply impracticable. While renters should not be price gouged simply due to landlord greed, developers should not be punished for new construction at a time where the cost of construction supplies can vary wildly. 159 There must be a balance between allowing rents to increase with the fluctuations of the economy and the construction industry and preventing landlords from taking advantage of economically disadvantaged people.

One answer could be instituting a rent cap proportional to the inflation rate, but only on preexisting properties in cities with a population of 50,000

152 Id.
153 Id.
154 See John Davisson, A Year Later, Justice Department Continues Housing Investigation, PATCH, https://patch.com/connecticut/darien/a-year-later-justice-department-continues-housing-investigation (June 16, 2011, 3:31 PM) (explaining that the “priority populations” provision had been rewritten due to constituent concerns).
156 Id.
157 Ginny Monk, CT Housing Committee Won’t Vote on Rent Cap This Session, CT MIRROR (Mar. 7, 2023, 2:58 PM), https://ctmirror.org/2023/03/07/ct-rent-cap-housing-committee/.
158 Id.
159 See generally Mercy Ogunnusi, Temitope Omotayo, Mansur Hamma-Adama, Bankole Osita Awuzie & Temitope Egbelakin, Lessons Learned from the Impact of COVID-19 on the Global Construction Industry, 20 J. ENG’R, DESIGN & TECH. 1, 12–13 (2022) (unpublished manuscript) (on file with author) (explaining that the COVID-19 pandemic has been especially damaging to construction efforts).
or more. This would allow developers to charge rent prices for new construction that reflect the increases in construction costs. At the same time, a rent cap on preexisting properties would ensure that vulnerable populations are not de facto evicted merely due to a landlord’s desire to generate more passive income. Such a rent cap would also protect smaller landlords who own only a handful of properties and are more susceptible to the fluctuations of the economy.\(^{160}\) Rent controls have produced mixed results among economists, but there is evidence to suggest rent caps are beneficial to both tenants and landlords.\(^{161}\) Alone, a rent cap could improve the housing crisis in Connecticut, but it would not come close to providing a complete solution.

### B. A Higher Mandated Affordability Requirement Statewide

Another helpful solution to the affordable housing problem would be a mandated affordability requirement for all multifamily developments, rather than total freedom from regulation if a development contains 30% affordable units (as currently prescribed by Section 8-30g).\(^{162}\) Currently, several towns’ regulations mandate anywhere from 10 to 20% affordability for new multifamily developments.\(^{163}\) A statute requiring all cities and towns statewide to modify their regulations to require new multifamily developments to designate 30% of the units as affordable would force developers to pursue these projects, as they would have no other option—if they wanted to create a development, it would have to be “affordable.” Such a requirement would also preserve local zoning control, as it could ensure the increase of affordability desired by Section 8-30g but refrain from providing a blank check to developers with respect to height, parking requirements, traffic congestion, etc.

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\(^{162}\) Supra Section III.A.

\(^{163}\) See, e.g., DARIEN, CONN., ZONING REGULS. § 583 (1999) (reflecting a 14% affordability rate); NEW CANAAN, CONN., ZONING REGULS. § 7.6(C)(3)(a) (2021) (reflecting a 15% minimum affordability rate); WESTPORT, CONN., ZONING REGULS. & SUBDIVISION REGULS. § 19A-1 (2022) (reflecting a 20% minimum affordability rate, along with a mandate workforce housing rate of 10%); WILTON, CONN., ZONING REGULS. § 29-4.D(6)(n) (2023) (reflecting a 10% minimum affordability rate in more populous zones of the town).
Generally, it appears that most planning and zoning commissions are open to increasing the required percentage.\textsuperscript{164} At the same time, other commissions may not share the same sentiments, given the strong historical evidence of exclusion.\textsuperscript{165} An across-the-board mandate would also counter the pretextual reasons other commissions and/or communities might otherwise proffer in opposition to new development. Municipalities would be forced to either include more affordable units (in a statutory sense) or refrain from any multifamily development at all.

Of course, this mandated affordability percentage would differ from Section 8-30g because, rather than requiring towns to meet a 10% overall affordability level, this type of policy would simply require new multifamily construction to include a higher number of affordable units. The policy could expire after a set term—for example, ten years—so as to refrain from precluding development indefinitely, should developers elect to boycott creation of new construction as a result of the higher affordability requirement. In addition, combined with an incentive for developers, a higher percentage could motivate new construction and accordingly, increase the housing stock.

C. Tax Credits Linked to the Number of Affordable Units

As discussed, developers need an incentive to create affordable housing units. Otherwise, these developments do not make financial sense for developers.\textsuperscript{166} Because “economic leverage is something that a community has to offer that the development community finds value in,”\textsuperscript{167} an economic incentive could be very effective. The incentive must be substantial enough to motivate construction of affordable housing, yet not so large that landlords could elect to create these developments to take advantage of the incentives.

An easy incentive could be tax credits linked to the percentage of affordable units within a development. For example, for each 10% allocation of units as “affordable,” developers could be entitled to a 10% reduction of

\textsuperscript{164} See, e.g., Meaghan Baron, P&Z Lines Up 141 Danbury Rd. & CT Humane Society for Approval on Nov. 29, GOOD MORNING WILTON (Nov. 23, 2021), https://goodmorningwilton.com/pz-lines-up-141-danbury-rd-ct-humane-society-for-approval-on-nov-29/ (providing an example of commissioners expressing support for an increase in the required percentage of affordable housing).


\textsuperscript{166} See supra Section III.B (discussing the amount of lost revenue a developer may experience by including affordable units).

\textsuperscript{167} David Schwartz, The Importance of Affordable Housing to Economic Competitiveness, 15 ECON. DEV. J. 40, 45 (2016).
their property tax bill every year. Naturally, there would need to be limits to such a policy, such as a maximum percent discount with respect to property taxes (e.g., up to 50% of the tax bill) and a limit on the number of years a developer could take advantage of such a program (e.g., ten years). A time limit could be helpful to allow for the reevaluation of incentives by municipalities. There would also need to be protections in place to ensure that landlords do not misuse such a program. An example could resemble the documentation required by the Payroll Protection Program (PPP) for loan forgiveness after the COVID-19 crisis. Similar to the PPP loan forgiveness applications, municipalities could require landlords to submit rent receipts or other documentation each year demonstrating that the affordable units were kept at an affordable rental rate in order to maintain eligibility for the property tax deduction. The idea is to reward developers for creating and maintaining affordable housing without punishing municipalities. Although municipalities would receive less in tax revenue due to such a policy, the benefits to the local economy from an influx of residents would likely far outweigh the consequences of a decrease in tax revenue.

Currently, there is an existing federal low-income housing tax credit, but federal funding is “quickly diminishing” and awards for these tax credits in Connecticut are “limited to approximately $10 million annually.” In addition, the application process for these tax credits is “highly competitive.” Thus, the state should focus on attacking exclusionary zoning and the affordable housing problem on a more local level. A tax credit system similar to the one suggested above could potentially attract more developers as it would be triggered automatically following construction rather than involve an application process. Also, the only burden on a landlord required to maintain the property tax discount would be to submit annual evidence that the rental rates for applicable units were kept “affordable.” Coupled with a higher mandated affordability percentage

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170 Schwartz, supra note 167, at 44.


172 Id.
and rent control, a tax credit could remedy the affordable housing and exclusionary zoning problem in Connecticut.

D. Modifications to the “Single-Family” of “Single-Family Zoning”

Beyond adopting a combination of rent controlled units, tax credits, and an increased mandatory affordability percentage, municipalities could make smaller modifications to their respective zoning regulations to allow for higher density that does not resemble multifamily housing. Or, in other words, municipalities could modify the “single-family” of “single-family zoning.” Expecting Connecticut municipalities to completely abolish single-family zoning would be unrealistic. However, collectively, smaller modifications to zoning regulations which permit higher density could help alleviate the exclusionary zoning problem, albeit at a slow rate.

One such modification, which several towns have already adopted\(^{173}\) and the state has enacted,\(^ {174}\) would be to place more control in the hands of individual property owners through the as-of-right creation of accessory dwelling units. Essentially, accessory dwelling units (ADUs) are “smaller, independent residential dwelling unit[s] located on the same lot as a stand-alone (i.e., detached) single-family home.”\(^ {175}\) Examples of ADUs could include anything from cottages to in-law apartments.\(^ {176}\) Benefits of ADUs are numerous, including a lessened impact on the environment, passive income for homeowners, an increase in a town’s tax base, etc.\(^ {177}\) However, although creation of accessory dwelling units could potentially increase the number of affordable units in a town, it would achieve this purpose at a much slower rate than an increased affordable unit percentage. In addition, this approach relies on individual property owners, who may not possess the funding or desire to erect an accessory dwelling unit or invite strangers to reside on their property. Currently, there is no discoverable data regarding the makeup of residents of ADUs, so it is difficult to determine whether ADUs would provide opportunities for lower-income populations.

To expand the impact of ADUs, municipalities could alter their regulations to allow creation of multiple ADUs on a single-family property.

\(^ {173}\) See, e.g., TOWN OF WILTON, CONN. ZONING REGULS. § 29-4.D(1) (2023) (“A single-family dwelling unit in any district may be converted to allow the inclusion of one additional dwelling unit per lot . . . . ”); RIDGEFIELD, CONN., ZONING REGULS. 3.3B(2), (3) (2022) (detailing regulations permitting accessory units and “affordable” accessory units); TOWN OF WESTPORT, CONN., ZONING REGULS. § 11-2.4.B (2022) (mentioning accessory units).

\(^ {174}\) See 2021 Conn. Acts No. 21-29 (Reg. Sess.) (explaining the newly enacted measures for as-of-right creation of accessory dwelling units in Connecticut).

\(^ {175}\) Accessory Dwelling Units, AM. PLAN. ASS’N, https://www.planning.org/knowledgebase/accessorydwellings/ (last visited Feb. 11, 2024).


This could vary based on the minimum lot size in a specific zone. For example, in one area of New Canaan, the minimum lot size is four acres, but the minimum lot size is two acres throughout much of the rest of the town. The town could enact a zoning regulation which would allow residents in the two-acre zone to construct one ADU, but residents in the four-acre zone to construct two ADUs. This would permit an appropriate level of growth based on lot size, rather than completely overthrow single-family zoning.

V. THE RESPONSES OF PEER STATES TO THE AFFORDABLE HOUSING SHORTAGE

Finally, Connecticut could turn to the approaches taken by peer states in response to the affordable housing shortage for inspiration. California and New Jersey have each attempted to tackle the affordable housing problem, but neither state has found an effective solution. Thus, to truly make an impact on the affordable housing crisis, Connecticut must be creative and design its own unique plan.

A. New Jersey and the Mount Laurel Doctrine

Arguably, New Jersey effectuated the most influential state approach to affordable housing. The state’s supreme court issued a series of decisions establishing the “Mount Laurel doctrine,” which prevents municipalities from excluding affordable housing and prohibits economic discrimination. Mount Laurel I required that municipalities absorb their “fair share” of affordable housing, and Mount Laurel II expanded this obligation to include affirmative steps municipalities must take to further the development of affordable housing. The doctrine binds all New Jersey municipalities and essentially nullifies “every significant zoning


179 For purposes of brevity, Part V discusses the approaches of just two states, California and New Jersey. These two states were selected because California is the largest state population-wise and New Jersey implemented perhaps the most influential approach to affordable housing by any state.


181 Stewart E. Sterk, Incentivizing Fair Housing, 101 B.U. L. REV. 1607, 1648 (2021). Mount Laurel II was the first decision by any state to set forth parameters for the creation of affordable housing. See Peter Buchsbaum, Affordable Housing and the Mount Laurel Doctrine: Lessons Learned, 57 WILLAMETTE L. REV. 201, 206 (2021) (discussing the “revolutionary” nature of the decision and defining the parameters which no other state has yet to establish).

ordinance in the state.” The Mount Laurel doctrine provides for a “builders’ remedy” that developers may pursue should municipalities fail to engage with affordable developments. Essentially, developers themselves could serve as “watchdogs” and ensure that municipalities permitted affordable housing as required by law. This bears similarity to the appeals process set forth by Connecticut General Statutes Section 8-30g. Since the 1983 Mount Laurel I decision, hundreds of developers have sued and sought relief.

Intense legislative backlash to the first three Mount Laurel decisions led to the creation of the Council of Affordable Housing (COAH) under New Jersey’s Fair Housing Act. COAH intended to establish the respective state and municipal needs for affordable housing and assist the determination of the “fair share” by municipalities, ultimately defaulted under its statutory obligations and the issue of the “fair share” obligation returned to the New Jersey Supreme Court. Thereafter, the state’s supreme court expanded the parameters established by Mount Laurel II. Still, due to the “administrative and judicial ping pong” that ensued, the creation of affordable housing remained virtually on pause statewide for fifteen years.

Following the four Mount Laurel decisions, the New Jersey affordable housing model can be summarized by five “key features” municipalities can adopt to “dismantle” exclusionary zoning: (1) “[a] baseline legal requirement that municipalities must provide their fair share of affordable housing;” (2) “[a] methodology to calculate housing obligations that prioritizes creating affordable homes in historically exclusionary communities, along transportation corridors, and near employment opportunities;” (3) “[a] requirement that homes have long-term affordability for the people and families that are most likely to be excluded, paired with flexible production mechanisms that also increase overall housing supply;” (4) “[s]trong legal frameworks of enforcement with real consequences for municipalities that shirk their obligations;” and (5) “[a]dvocacy institutions...
that use enforcement frameworks to ensure that municipalities comply with their legal obligations.\textsuperscript{191}

Despite the complex and rich history of affordable housing litigation in New Jersey, the efforts taken by the state “have yielded limited success”\textsuperscript{192} since 1980. From 1980–2014, just before the \textit{Mount Laurel IV} decision, only 49,959 deed-restricted affordable units were constructed.\textsuperscript{193} However, after \textit{Mount Laurel IV} in 2015, between 2015–2022, 21,891 additional affordable units were constructed,\textsuperscript{194} demonstrating that the language in \textit{Mount Laurel IV} did work to expand access to affordable housing. Still, the 21,891 units are a fraction of the 70,000 multifamily units constructed during the same time period.\textsuperscript{195}

Recently, Connecticut legislators attempted to adopt “fair share” language that mirrors that of New Jersey.\textsuperscript{196} The proposed bill would have empowered Connecticut’s Secretary of the Office of Policy and Management to work with Commissioners of Housing and Economic and Community Development (among others) to create a plan for each municipality’s fair share allocation, increasing the allocation for municipalities with a higher median income.\textsuperscript{197} If the bill passed in the state legislature, some municipalities would have been forced to comply with fair share goals within ten years.\textsuperscript{198} Like \textsection 8-30g, the bill relied on the desire of developers to construct affordable housing—yet the bill, again like \textsection 8-30g, provided no incentive for developers to do so. Ultimately, the bill failed.\textsuperscript{199} Only time will reveal whether the state legislature will continue to push for adoption of “fair share” language.


\textsuperscript{193} \textsc{Fair Share-Hous. CTR., supra note 191, at 17.}

\textsuperscript{194} Id. The annualized rate of production of deed-restricted affordable units nearly doubled following the fourth \textit{Mount Laurel} decision. Id.

\textsuperscript{195} Id. at 19. The affordability percentage is roughly 30%, which is the same affordability threshold for a development submitted under Section 8-30g. See \textsc{Conn. Gen. Stat. Ann. § 8-30g(a)(6) (West 2022).} Although New Jersey appears more progressive on the affordability front, the results are not as far off from Connecticut as it first seems.


\textsuperscript{197} Id.

\textsuperscript{198} See \textit{id.} A significant consequence of this requirement is forced development at a rapid and likely unsustainable rate. For example, to meet the “fair share” allocation requirements, nearly one-third of all Connecticut towns would need to increase their respective housing stocks by at least 80%. \textit{Fair Share: Units and Cost Calculations, CT169 STRONG} (2023), https://docs.google.com/spreadsheets/d/1E7CFD4DXc0RS3wOPQ_81FehpoeipYkWEcR2NnXk/edit?gid=1017896802 (reflecting that 53 of the 169 towns in Connecticut, or 31%, would need to increase housing stock by at least 80% to achieve this purpose).

B. California and the Housing Accountability Act

California has required municipalities to create plans to respond to local housing needs since 1980. Requirements for these plans have increased in complexity over the years. These plans must contain analyses of constraints on housing, such as zoning, and municipalities must also develop a timeline of actions to take in order to meet regional housing needs. However, no mechanism existed to facilitate enforcement of these statutory obligations until 2017, when the California legislature established a streamlined approval process for developments in municipalities that have demonstrably failed to meet their housing needs. The statute also “limits the power of officials in these municipalities to inject their ‘personal or subjective judgment’ into evaluation of applications.” This resembles the appeals process of Section 8-30g, although Connecticut’s statute seems more restrictive with respect to a municipality’s grounds for denial. In addition, in 2019, the California legislature restricted the ability of municipalities to decrease permissible housing density and placed other limitations on the development proposal process employed by local governments.

California also adopted rent control legislation in 2019 which limits annual rent increases to “5% plus the percentage change in the cost of living, or 10%, whichever is lower.” The legislation additionally requires landlords to show “just cause” to terminate tenancy. Efficacy of these statutes in expanding access to housing is uncertain, but presumably they will have a positive impact. Currently, only seven states (including California) and the District of Columbia employ some form of rent control, whether at the state, county, or city level.

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201 Id.

202 Sterk, supra note 181, at 1650. See also CAL. GOV’T CODE § 65583(a)(5), (c) (West 2023) (enumerating these requirements).

203 Id.

204 Id.

205 Sterk, supra note 181, at 1651.

206 While Section 8-30g prohibits municipal denials unless a project offends public health and safety, the California Housing Accountability Act requires municipalities to deem projects compliant “if a reasonable person could deem the project compliant.” Chris Elmendorf, Recalibrating Local Politics to Increase the Supply of Housing, 42 REGUL. 38, 40 (2019). Thus, the California statute rests on a reasonable person standard, potentially leaving room for arguments against a proposal, as compared to Section 8-30g, where reasonableness is all but irrelevant.

207 Sterk, supra note 181, at 1651.


209 CAL. CIV. CODE § 1946.2(a) (West 2022).

Despite the foregoing, cities are still “working their way up the learning curve”\(^{210}\) and the effectiveness of these inclusionary statutes in California remains to be seen.\(^{211}\)

CONCLUSION

Although exclusionary zoning does not violate the Fair Housing Act, it is indisputable that current zoning regulations across the state have perpetuated a pattern of economic and racial segregation. At a minimum, there is a substantial affordable housing problem that needs to be solved.

At present, Connecticut General Statutes Section 8-30g cannot adequately address the affordable housing problem in Connecticut. The statute demonstrably fails to achieve its intended purpose and has become perverted over the years. As written, reaching an acceptable affordability level under Section 8-30g is a mathematical impossibility for municipalities. Low and middle-income populations, like their elitist NIMBY neighbors, must have access to their own “backyards,” which remains unattainable given that Section 8-30g developments are not economically attractive to developers. Further, municipalities should not be subjected to threats by developers that seek to exploit Section 8-30g for financial gain.

Complete repeal, or, at least, substantial revision to Section 8-30g is necessary to combat the housing crisis. The right solution to the affordable housing problem in Connecticut lies in the intersection between providing developers with an incentive to create affordable housing and preventing the housing stock from becoming even less accessible to low and middle-income populations. Without actively seeking to remedy the economic segregation that exists due to the racist underpinnings of zoning ordinances in Connecticut, towns will get nowhere. Unless and until the root of the problem—exclusionary zoning—is addressed, the economic and racial segregation present across the state will continue to exist, and systemic racism will persist.

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\(^{210}\) Elmendorf et al., supra note 200, at 227.

\(^{211}\) Sterk, supra note 181, at 1651. See also Elmendorf, supra note 205, at 40 (stating that the requirement for municipalities to consider housing-supply constraints and a plan to remove these constraints “hasn’t achieved a great deal”).
### Table I: Demographics of Former Alleged Sundown Towns

<table>
<thead>
<tr>
<th>Town</th>
<th>White Population 2016–2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>East Haven</td>
<td>71.1%</td>
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<tr>
<td>Glastonbury</td>
<td>81.0%</td>
</tr>
<tr>
<td>Greenwich</td>
<td>74.1%</td>
</tr>
<tr>
<td>Litchfield</td>
<td>85.6%</td>
</tr>
<tr>
<td>New Fairfield</td>
<td>86.0%</td>
</tr>
<tr>
<td>Ridgefield</td>
<td>86.5%</td>
</tr>
<tr>
<td>Weston</td>
<td>82.4%</td>
</tr>
<tr>
<td>Westport</td>
<td>83.4%</td>
</tr>
</tbody>
</table>

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Table II: Demographics of Fairfield County Towns

<table>
<thead>
<tr>
<th>TOWN</th>
<th>WHITE POPULATION 2016–2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bethel</td>
<td>74.9%</td>
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<tr>
<td>Bridgeport</td>
<td>19.3%</td>
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<tr>
<td>Brookfield</td>
<td>86.7%</td>
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<tr>
<td>Danbury</td>
<td>52.1%</td>
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<tr>
<td>Darien</td>
<td>86.2%</td>
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<tr>
<td>Easton</td>
<td>91.4%</td>
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<tr>
<td>Fairfield</td>
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<tr>
<td>Greenwich</td>
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<tr>
<td>Monroe</td>
<td>80.8%</td>
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<tr>
<td>New Canaan</td>
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<tr>
<td>New Fairfield</td>
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<tr>
<td>Newtown</td>
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<tr>
<td>Norwalk</td>
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<tr>
<td>Redding</td>
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<td>Ridgefield</td>
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<td>Shelton</td>
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<td>Trumbull</td>
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<td>Weston</td>
<td>82.4%</td>
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<tr>
<td>Westport</td>
<td>83.4%</td>
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<tr>
<td>Wilton</td>
<td>81.3%</td>
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