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# A Place to Call Home: The Fight for Affordable

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**A PLACE TO CALL HOME:**

**THE FIGHT FOR AFFORDABLE HOUSING IN HIGH-INCOME AREAS**

**BY ERIN LAVITT**

**MAY 2018**

**A MASTER'S PAPER**

**SUBMITTED TO THE FACULTY OF CLARK UNIVERSITY, WORCESTER,  
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**KATHRYN MADDEN, CHIEF INSTRUCTOR**

## **ABSTRACT**

### **A PLACE TO CALL HOME: THE FIGHT FOR AFFORDABLE HOUSING IN HIGH- INCOME AREAS**

**BY ERIN LAVITT**

This paper provides a focus on the national affordable housing crisis, using the states of Connecticut and Massachusetts as a case study. The project looks at the difficulties of overcoming resident resistance, entrenched zoning difficulties, and how the politicization and de-politicization of the crisis has influenced the effectiveness of affordable housing programs. The structure of the paper is as follows. First, a background is provided on the history of affordable housing. This history begins with M.G.L. Chapter 40B, the 1969 Massachusetts act concerning affordable housing creation. A good deal of focus is given to the 1975 and 1983 *Mt. Laurel* cases, which were rulings by the New Jersey Supreme Court mandating the creation of affordable housing, and appointing the courts to monitor zoning.

Following this, time is spent on C.G.L. Sec 8-30-g, Connecticut's affordable housing law, and the similarities and differences between the two states. The newspapers, town websites, and other resources used to gather the relevant facts are outlined in the methodology section.

Following this, there are the case studies, where time is devoted to examining two towns who have fallen short of their ten-percent affordable housing goal, and examining their governance structures. My findings section looks at the current state of affordable housing and the challenges to come. My conclusions section contains my recommendation for less local control of zoning, and outlines other potential solutions.

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## **DEDICATION**

This paper is dedicated to my father, Robert Gerard Lavitt, for his invaluable support. I have been lucky to enjoy his invaluable support both while writing this paper and throughout my life. No daughter could ask for a better father.

## **ACKNOWLEDGEMENTS**

During the writing of this final paper, I was privileged to have the invaluable support of many people. I would like to take this opportunity to thank my thesis adviser, Professor Kathryn Madden. In addition, the support I have received from my internship supervisor, Michael Rendulic, and the Holden Area Office at which I have been delighted to work, were of immense assistance in the completion of this paper. Any errors contained herein are my own and not the fault of any who assisted me in reviewing it.

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## I. INTRODUCTION

Over the past thirty years, the prices of American housing nationwide have risen while wages have stagnated. Even in wealthy states with quick recoveries from the Great Recession, rents and home prices have continued to rise while wages stagnate.

The federal response to this problem is somewhat limited by the lack of any federal law requiring inclusionary zoning. The tools available to policymakers include lowering interest rates, federally backed mortgages, and affordable housing tax credits. While these methods can be useful for increasing housing stock, they mainly deal with the demand side of housing. Housing and Urban Development (HUD), the Fed, USDA and other federal agencies have two tools, federally backed mortgages and interest rates, to increase demand for housing, while only one, affordable housing tax credits, to increase the supply of housing.

Affordable housing is typically considered to be that which costs less than a third of a person's income. People who spend more than a third of their income on housing are severely cost-burdened. The high cost affects their ability to save for retirement, send their children or themselves to college, buy a home, or spend money in the local economy. Thus, future social services, lost tax revenue from higher wages, lower rates of owner occupied housing and potential degradation of housing stock, and a weaker local economy are all consequences of this crisis.

However, not all states struggle equally with this problem. In many areas of the country, a person making the median income can easily afford a home. In southern New England, this is not

the case. The affordable housing crisis has long since reached critical levels in the states of Massachusetts and Connecticut.

This lack has dire implications for the existence of a robust middle class, expanding wealth inequality, and the economic health of these states. Many towns have a municipal hiring crisis, or even teacher shortages, due to high costs of living. Both states have an aging population, especially in rural and suburban areas. If health care professionals are unable to afford to live in the areas in which they work, caring for this aging population will pose a great challenge to the towns in the time ahead.

Without young professionals moving into these areas, towns may also see a gradual yet damaging decrease in their tax base. Properties which remain on the market longer may decrease in value, particularly if their owners have little interest in maintaining them. Then, over time, towns will face the choice of increasing property taxes or offering fewer services to existing residents.

The lack of affordability also impacts the housing stock being created now. The creation of new single-family homes has not completely recovered from the recession, which was a decade ago. Additionally, many new homes built are large, containing five or six bedrooms, and marketed to upper-income buyers. In the future, Massachusetts and Connecticut may see their poorest residents living in the oldest housing, as much of the “starter home” stock dates from mid-century or earlier. If these homes require repairs, or historic maintenance, these owners may little be able to maintain them, and thus the prestige, value, and appeal of much of southern New England’s housing stock could decline.

Unfortunately, resident objections to affordable housing remain a strong deterrent to its construction. Residents tend to be less likely to object to the creation of elderly and disabled housing than housing for working families. While many elderly and disabled persons do benefit from such housing, families are often left without any affordable option in desirable areas. Often, the objection from residents is not about the existence of housing, but about who gets it.

Exclusionary, or “snob” zoning, has an ugly racial and legal history. A fear that immigrant groups, non-traditional families, sexual minorities, and African Americans may move into affordable housing is typically a source of objections to affordable housing, although this may not be stated openly. References to preserving the “character” of a neighborhood are usually code for keeping out a certain type of household. While residents often object to the potential costs of increased schoolchildren, such as higher class sizes and additional property taxes, or the crimes that younger and able-bodied individuals may be more likely to commit, the cost of policing and education may be reimbursed by the state, whereas higher ambulance costs or social services for the elderly are often borne solely by the town.

What is too bad is that both Massachusetts and Connecticut define affordable housing as those whom make sixty or eighty percent of the median income level can afford. By this definition, at least half of all housing stock should be affordable, were housing costs to mimic the economic makeup of an area. Many residents are, unknowingly or otherwise, arguing against benefits they themselves would be eligible for.

Much of the new affordable housing has been built in lower-income areas. While this may have some benefit to the local population, it has the unfortunate side effect of concentrating poverty. This can also be a poor use of taxpayer dollars. If affordable housing tax credits are

given to a property built in, for example, Hartford or Worcester, the developer must set at least twenty percent of the units to be affordable for *metropolitan area market rates*.

Therefore, an “affordable” apartment built in Worcester could be some of the most expensive housing in the city itself, but if its rents were average for the metropolitan area—one that includes such wealthy enclaves as Shrewsbury—it would be eligible for tax breaks, grants, and federally backed loan payments. Thus, the developer profits immensely from the city of Worcester, while pricing above the range of many of its residents. In high-income areas, this problem is more easily avoided.

High-income areas may also include superior schools, and children of existing and new residents benefit from economic integration. The quality of life in America is highly tied to zip code, which is a useful determinant of children’s future educational achievement, earnings, health, and life expectancy. The social benefits of including more affordable housing in high-income areas for future generations are therefore enormous.

This paper will look at the legislative history of affordable housing, the local issues surrounding housing creation, and examine in detail two high-income towns whose interest in creating affordable housing is not matched by their achievements. In my findings, I will show that if both states are interested in building the housing stock they need for the future, less local control of zoning may be a necessity.

## II. LITERATURE REVIEW

It is important to define what certain terms, which will hereafter be used colloquially, mean in a larger context, and how both Massachusetts and Connecticut count affordable housing.

### Definitions

Connecticut currently defines affordable housing units as those which are deed-restricted for affordability *or* as those which receive government assistance, such as Section 8 vouchers or USDA home subsidies (PCS, 2014). Massachusetts defines affordable housing units only as those which are deed-restricted for affordability, and sets a minimum standard of thirty years on deed restrictions for new affordable housing units (CHAPA, 2011). Massachusetts makes no distinction between units intended for the elderly or disabled and those suitable for working families, while Connecticut awards more points towards those units that are not age-restricted.

Both states have an important history of “home rule.” This term refers to the traditional right of towns to control their own zoning bylaws. Nearly unique in the continental United States, Connecticut and Massachusetts as states are composed entirely of incorporated territory. Not one patch of land is outside of the rule of a town or city. Most of these towns are at least a century old, and have grown used to a high degree of autonomy when deciding their own zoning overlays. The challenges this poses for regional planners and state governments are notable, as residents and local officials are more likely to be hyper-focused on maintaining control than on benefitting the regional economy. This is particularly the case in high-income bedroom

communities, where a “private” lifestyle and “neighborhood character” are chief among most residents’ reasons for moving there.

Multiple attempts to solve the conflict between home rule and inclusionary zoning have taken place. This next section will describe some of the most important.

### **History of Affordable Housing**

In the year 1969, the commonwealth of Massachusetts passed M.G.L. Chapter 40B. With this law, Massachusetts became one of the first states in America to pass an inclusionary zoning act. The intention (CHAPA, 2011) was to sponsor the creation of affordable housing in Massachusetts. It authorized local zoning boards to approve certain developers’ applications for housing construction under flexible rules if twenty to twenty-five percent of the units built would have long-term affordability restrictions (2011).

The controversy of the program stems from the developer’s right to potentially appeal the decision of a local zoning board (CHAPA, 2011). If the developer is a public agency, non-profit corporation, or limited dividend company, and the town’s affordable housing was less than ten percent of available housing stock or less than 1.5 percent of all developable land, they would have the right to appeal an adverse local decision before the HAC (2011).

While communities that meet short-term production requirements can receive one or two-year exemptions from this appeal process, as of November 2013 only forty-seven municipalities were “appeal-proof”—either because they had met the housing stock requirement, the land requirement, or obtained a two-year exemption. This is out of three hundred and fifty-one possible municipalities, or to re-phrase, less than fifteen percent of all Massachusetts municipalities are immune from Chapter 40B.

This aside, it is impossible to talk about affordable housing in the United States of America without talking about Mt. Laurel, possibly one of the most important legal decisions of the latter twentieth century (Albright, p. 90). The Mt. Laurel decision, or “doctrine”, was the result of a lawsuit brought by the NAACP against Mount Laurel Township, New Jersey and decided by the New Jersey Supreme Court in 1975.

The NAACP charged that the town’s zoning practices, which included 5-acre lots and no allowance for multi-family units, were exclusionary. People below the median income level, the NAACP charged, were unable to settle in certain areas. This amounted to *de facto* racial segregation and *de jure* economic segregation.

The New Jersey Supreme Court agreed and mandated that towns use their zoning powers to affirmatively encourage affordable housing. This decision was both a severe blow to “home rule” and a significant victory against so-called “snob zoning” (Albright, p. 90). However, initially it sponsored the creation of only a few affordable housing units. In 1983, the New Jersey Supreme Court followed up on their initial decision (Law Server, 2017), to add enforcement mechanisms to the act.

Now, courts had multiple tools to foster inclusionary zoning. One was that a small number of trial judges with expertise in housing were designated to oversee all relevant suits, so that technical expert knowledge could be brought to bear on such cases (Belsky, 2006). Two, a “builder’s remedy” was created, where if the municipality denied a builder’s affordable housing application, a court could seek to approve units for a higher density than would otherwise be allowed. Three, “special masters”, usually licensed professional planners, paid for by the

municipality, would assist the trial judges in making determinations on the validity of the application (2006).

Municipalities had six years to come into compliance with the inclusionary zoning requirements, after which point they would be immune from suits based on affordability if they met the requirements (Belsky, 2006). To assist, the New Jersey legislature passed their Fair Housing Act, which created COAH (The Council on Affordable Housing). Towns could insulate themselves from lawsuits if they complied with COAH regulations. COAH would pre-determine the number of affordable units necessary for a municipality to provide and develop compliance plans to help meet these goals, which included the use of points and transferring their obligation for affordable housing to another, willing region, provided payment was given. Some municipalities declined participation, calculating that a developer was unlikely to come along and that they might create more affordable housing by complying (Albright). New Jersey's reaction would have eerie echoes for neighboring Connecticut.

Fearful of similar suits, states across the country begin to pass laws allowing for the creation of affordable housing (Bratt, p. 596). While it would be only seven years before Connecticut passed its answer to the Mt. Laurel doctrine, the resulting law would borrow much from Chapter 40B and Mt. Laurel in principle and enforcement.

The 1990 law stated that if a developer designates twenty percent of a proposed housing development as affordable, and the development is located in an area where less than 10% of units are affordable, he or she can appeal to the state for a variance from any local zoning regulations. In Massachusetts, the developer must prove that the need for affordable housing



outweighs the importance of the local zoning regulations. In Connecticut, the municipality must prove that their local zoning regulations outweighs the need for affordable housing.

A Connecticut city or town may obtain a moratorium from this builder's remedy by constructing affordable housing that is at least ten percent of existing stock or obtaining a one or two-year moratorium for progress in increasing the affordable housing stock.

Connecticut allows any developer, not merely a non-profit, state agency, or limited liability corporation as is the case in Massachusetts, to take advantage of this "builder's remedy." This might be considered the proverbial 'stick' of the law. The 'carrot' of the law is that if towns create their own affordable housing zones, the state, through the Commissioner of Housing, will provide funds to assist in the construction of these new units (Abbasi, p .4). Fewer than 50 Connecticut and Massachusetts towns have done this (Bratt, p. 93).

Both states have very different approval processes, largely reflecting the history of the law. While Connecticut and Massachusetts each prize local control to a degree rarely seen outside of New England, with even their smallest towns all having separate zoning codes and boards, Connecticut enacted Sec. 8-30g in fear of a decision like Mt. Laurel (Bratt, p. 95). Thus, in Connecticut, as stated, the law tends to be more developer-friendly (Abbasi, p. 5). Nearly every case that goes in front of the courts in Connecticut has ruled in favor of developers, as the burden of proof falls upon towns to prove that their objections are stronger than the town's need for affordable housing (Abbasi, p. 5).

In Massachusetts, the developer's case is unlikely to be heard in court. Cases are arbitrated before a housing committee, whose members are political appointees of the governor. Thus, the odds of a development application being approved are at least somewhat affected by

the political winds. After all, if a governor is uninterested in tacking the affordable housing problem, he or she can influence the committee's voting by placing those who are friendly to towns in voting positions. This also substantially increases the risks for developers; those whose petitions are in waiting cannot be assured of a favorable verdict in an election year. It is therefore unsurprising that half of Massachusetts' affordable housing is built by non-profits, rather than corporations worried about the bottom line.

The main difference is that Connecticut litigates these zoning variances through the courts, while in Massachusetts such cases are decided by a committee whose appointees serve at the pleasure of the governor. Connecticut, crucially, also requires towns to prove that their objection to granting a zoning variance is greater than the need for affordable housing. Massachusetts asks developers to prove that the need for affordable housing is greater than the town's objection to granting the zoning variance. While Massachusetts developers may be somewhat spared the costs of litigation, compared to Connecticut developers they face, especially dependent upon the composition of the council, steeper odds of approval.

### **State of Affordable Housing**

Currently, Massachusetts is described the Council of Community and Economic Research as the fourth most expensive state to live in, with Connecticut placing in the ten most expensive on every list in the past 5 years. Massachusetts' housing wage, as of 2015, was \$24.64/hour. Connecticut's was \$24.29 per hour.

However, it is worth saying that in both states there is great variation in the availability and cost of rental housing in both states. In the city of Springfield, MA, the average rent for an one-bedroom apartment is \$949 per month (US Census, 2017). The average rent for a Springfield

two-bedroom is \$1143 per month. In the city of Boston, MA the average rent for an one-bedroom apartment is \$2650 per month, while the average two-bedroom apartment rents for \$3347 per month (Census, 2017).

In West Hartford, Connecticut, the average rent for a one-bedroom apartment was \$1,078 per month, while the average rent for a two-bedroom apartment was \$1,289 per month (2017). In Torrington, CT, the average rent for a one-bedroom apartment was \$798 per month, while the average rental for a two-bedroom was \$997 per month.

The same holds true for home purchase. In Boston, MA, the average home sales price is \$601,600 (Zillow, 2017). In Springfield, MA the average home sales price is \$150,000 (Zillow, 2017). In West Hartford, CT the average home sales price is \$275,100, whereas in Torrington, CT the average home sales price is \$139,900 (Zillow, 2017).

This is only a snapshot, but the intent is to demonstrate that even in wealthy states such as Connecticut and Massachusetts, money, and therefore higher rents and home values, remain concentrated in a few areas.

Another major difference between Connecticut and Massachusetts in relation to major affordable housing policy is the different structure of non-profits and governance in both states. Perhaps due to the regulation that bars many for-profit developers from seeking “builder’s remedy”, non-profits in Massachusetts such as CHAPA, the Citizens’ Housing and Planning Association, Massachusetts Housing Partnership, and MassHousing have amassed considerable clout in the construction of affordable housing. While significant gaps remain, CHAPA can still proudly point to thousands of units of affordable housing built since the passage of Chapter 40B, seventy-eight percent of which were in rural or suburban areas (CHAPA, 2014).

The relative popularities of the laws are both quite different. Massachusetts residents also voted by a fifty-eight percent margin to keep Chapter 40B only eight years ago, so the law can point to some popularity in the state. Conversely, the Connecticut state legislature in July of 2018 overrode a governor's veto and made it significantly easier for towns to obtain a moratorium, protection against developer suits (Bansal, 2017). But not all the news is bad.

The current Connecticut governor, since his tenure began in 2011, has overseen the creation of 10,000 additional units of affordable housing (PCS, 2016). Malloy has also begun several initiatives, including the creation of HOMEConnecticut, a policy group under the umbrella of Partnership of Strong Communities, and created a Department of Housing entirely separate from the Connecticut Department of Economic and Community Development. However, Daniel Malloy enjoys the lowest approval rating of any sitting governor, below a quarter of Connecticut's population. His association with Sec. 8-30-g may well have worked to the law's detriment.

The absence of self-funded, non-governmental and established affordable housing organizations in Connecticut has likely done much to weaken the movement. Even those organizations which oversee the creation and promotion of affordable housing, excepting the Connecticut Housing Finance Authority, are branch offices of national or international charities such as Partnership for Stronger Communities, United Way, Habitat for Humanity and Neighbor Works. CHFA (Connecticut Housing Finance Authority) has something of the "state" clinging to its brand. This perceived lack of independence from the political structure may work to the organization's detriment.

Both states set the goal for creating or designating ten percent of their housing stock as affordable decades ago. Connecticut estimated it would take ten years for such an effort; Massachusetts, five (CHAPA, 2011). Connecticut has one affordable unit available for every three very low-income families (Connecticut Housing Coalition, 2013). Massachusetts is the sixth-most expensive state in the nation (NLIHC, 2018).

The National Low-Income Housing Coalition estimates that in Connecticut, there were 36 available rental units for every 100 low-income households; in Massachusetts, there were 46 available rental units for every 100 low-income households (2017). Despite the decades of existence of Chapter 40(b) and Sec 8-30-g, both Connecticut and Massachusetts have an affordable housing shortage.

### III. METHODOLOGY

The research design for this paper came in several steps. This paper was always intended to be an internship practicum paper. The internship supervisor, Michael Rendulic, was consulted as for a potential topic. Michael Rendulic is the housing programs director for USDA: Rural Development Southern New England. He oversees the states of Massachusetts, Connecticut, and Rhode Island. He mentioned it might be interesting to do a study comparison of Chapter 40B and Sec 8-30-g, as he felt little comparison work had been done on Connecticut and Massachusetts. It indeed seemed in the literature review that Connecticut had been typically lumped in with the New York-New Jersey tri-state area, whereas Massachusetts had been studied on its own or in comparison to neighboring Vermont, Maine and New Hampshire. The topic thus selected, it became a matter of beginning research, refining the design, and selecting the proper format for the conclusions.

Selecting a background of robust academic sources was necessary. After this was complete, it was decided to perform two case studies on towns. The focus of this research was in high-income areas that considered themselves progressive, had made some policy moves towards affordable housing creation, yet nevertheless fell flat of the ten percent affordability goal set by the state of Connecticut and the commonwealth of Massachusetts. Initially, it was thought important to select towns that were similar in population size. Upon the advice of Calandra Clark from Mass Housing Partnership, who was generous to give time to consult on this project, this requirement was discarded.

It was initially planned to interview local personnel, residents, and officials involved in affordable housing development, alongside those opposed to affordable housing development.

Due to time constraints and the difficulty of securing institutional review board approval, this was abandoned in favor of consulting town meeting records, local newspapers, and official public documents, which proved a treasure trove of information on all their own.

It was fortunate to have the ability consult the Hartford Courant archives online through the Clark library. Likewise, both Simsbury, CT and Stow, MA maintain detailed and accessible town websites. Thanks to public meeting laws, the remarks of residents, multiple filings of the developer, and the expertise of the town officials involved was clearly displayed.

It is my pleasure to impart this research to you in the next section.

#### IV. CASE STUDIES

Simsbury, CT and Stow, MA were both selected due to being self-described “progressive” and extremely affluent communities who remain quite unaffordable. First, some necessary background on both towns will be provided.

One, both towns are among the wealthiest and most exclusive in the state. Stow boasts three current and former state representatives as residents. Simsbury boasts at least as many, plus several senators.

Two, both towns express a commitment to affordable housing. Simsbury, CT proudly describes itself as a “progressive community” and regularly advertises Section 8 openings in local papers. Stow, MA has a community preservation plan that includes the creation of affordable housing, and has sent out a request for affordable housing proposals funded by town dollars, not through state assistance.

Three, neither town, despite the stated commitment to affordable housing, has seen a significant change in affordability or been able to attract the blue-collar demographic it needs to staff its schools, police its streets, and drive its ambulances, among other necessary functions. Both suffer from a “graying problem” and negative population growth. While these towns are both currently considered very desirable places to live, how long they remain that way will depend at least partially upon their ability to attract a younger and more middle-class demographic.

While Simsbury, CT, which stands at 23,511 residents as of the 2010 census, is considerably larger than Stow, with a higher average population density, the racial and economic demographics of the town are considerably more similar than this might suggest.



<b>Town Name</b>	<b>Simsbury, CT</b>	<b>Stow, MA</b>
<b>Average Household Income</b>	120,432	137,551
<b>% White</b>	95.3	93.6
<b>% African American</b>	1.17	0.7
<b>% Native American</b>	0.09	0.2
<b>% Asian or Pacific Islander</b>	2.15	3.3
<b>% Hispanic or Latino</b>	1.54	1.9
<b>% Mixed-Race</b>	1.03	1.9
<b>% Other Races</b>	0.26	0.4
<b>Median Age</b>	40 years	43.5 years

SOURCE: U.S. CENSUS BUREAU (2010)

As one can see, both towns are overwhelmingly white with household incomes above six figures and an aging population. However, they do differ in other respects. Stow, MA is governed by town meeting. This structure provides for more direct resident participation and control of town spending processes. As a downside compared to Simsbury’s board of selectmen, it allows much less flexibility in implementing a budget, and thus Stow is somewhat hampered in its ability to plan ahead or re-appropriate tax money. Both towns receive the vast majority of all funding through property taxes.

While both towns have notable characteristics, their white, wealthy, and rural nature is hardly unique. Many Connecticut and Massachusetts towns share similar characteristics.

Therefore, I think this research will be applicable to other wealthy towns. Connecticut and Massachusetts have no shortage of aging, wealthy communities, and the challenges this poses are perhaps not as well understood by residents and the general public as they are by community development professionals. Providing social services to an aging population requires young professionals, and the cost of labor is raised enormously if workers cannot live in the areas in which they work.

Additionally, a town with a shrinking population sees its tax base decline gradually, while its actual costs as a town—infrastructure, policing, and the like—either stay flat or increase with time. Yet, many individuals oppose new affordable housing construction on the principles that families with children will raise property taxes and reduce the quality of life in their community. When the evidence for this fails to appear, such intangible elements as “character” and “neighborhood makeup” are floated.

Fighting against resident resistance can be tricky for developers and community development professionals alike. I am excited to explore the challenges that lie ahead for southern New England’s affordable housing crisis.

### **Simsbury, CT**

Simsbury’s public schools have repeatedly ranked among the top ten in Connecticut. In 2015, it was declared the 9<sup>th</sup> best place to live in the United States by TIME magazine. It is one of few New England towns that can boast of positive population growth, even if only a modest two percent increase since the last census. Simsbury’s official website proudly describes it as a “progressive community that combines the forward-thinking concepts of sustainable living with the simplicity of days gone by” (Simsbury, 2018). Yet according to a recent estimate, only

3.72% of Simsbury's housing stock meets affordability standards—hardly a progressive or sustainable number.

The town itself does operate 110 affordable housing units that service only seniors and the disabled. In August 2017, they received a HUD block grant through the small cities program for the third time in ten years. The grant will garner \$750,000 in improvements to the existing housing stock.

Recently, the town has rejected three separate applications by a developer for a 4.4 acre property on 80 Climax Road. The development would consist of 15 houses, 3 of which would be affordable units indistinguishable from the others in appearance. 75 residents attended a meeting of the planning and zoning commission to address the proposed development. The residents hired their own lawyer to represent them. Currently the property is home to one single-family home.

While the Courant reports the developer's interest in appealing, no court case was ever filed and a perusal of the planning commission minutes proves that no new application was ever put through the town. There were concerns about the sight-back and the set-back from the road, as well as potential storm drainage and flooding. The property is located in a 100-year flood zone. Currently line of sight to the intersection is interfered with by many overgrown, mature trees. The town also did not exercise its right to conditional approval in order to allow the developer to address their concerns.

It is of course difficult to judge the town's overall attitude towards affordable housing from one rejected application. However, Simsbury residents appear to have strong organizing ability and the means to make their objections heard in a way residents of poorer towns do not.

Those residents opposed to developments in Hartford, the poorest municipality in Connecticut, could likely not afford to hire a lawyer to represent their interests. They might not be able to afford to send out a mailing to every Simsbury resident, to set up a website, or to post signage on the site. While residents state that the statute is “well-intentioned”, those quoted in a Hartford courant article state the proposed development is “unfair”, “an incursion”, “inappropriate”, “traumatizing”, “destructive”, “abuse” and a “nightmare.” Such hyperbolic language inspires little confidence in residents’ commitment to affordable housing overall.

The, town, too has ways of protecting itself against development that poorer municipalities do not. Despite being a town of under 25,000 people, Simsbury also is able to employ a town planning attorney and a full-time engineer. This helps them avoid liability and increases the town’s knowledge base when it comes to construction problems.

During the meeting in which the developer’s application was rejected, the town attorney advised them that rejections of Sec 8-30-g applications should be based on “quantifiable criteria... e.g. if an 8-30-g application were rejected because you thought it would destroy the neighborhood’s character—that is not quantifiable... however, if the application were rejected because you believe the roadway will become unsafe if the intersection is built as proposed, that is in the nature of a quantifiable harm...” (p. 6, 2017) and that the committee must give a reason in the record to reject expert testimony.

The employing of a planning attorney with background knowledge of Sec. 8-30-g is something beyond the reach of many, less affluent towns. Such places may be more afraid of lawsuits, unsure of how to avoid liability, and regard the hiring of an outside firm as a waste of taxpayer money. Thus, despite Connecticut’s stricter requirements around rejections for Sec. 8-

30-g, this example would indicate wealthy towns can still find ways to stop the construction of affordable housing within their borders.

### **Stow, MA**

For my point of comparison, I selected the town of Stow, MA. While Stow is a much smaller town than Simsbury, I believe it is similar enough to warrant useful comparisons. Like most Connecticut towns, Simsbury is governed not by town meeting but a board of selectmen, Stow is governed by town meeting.

Nevertheless, Stow appears to be politically similar to Simsbury. It has committed itself to increased affordable housing in meaningful ways yet remains far short of state affordability guidelines. Unlike Simsbury, Stow operates a loan and grant program through its Municipal Affordable Housing Trust. While no recipients have been recorded as of yet, according to the town meeting, Habitat for Humanity is a current applicant. The Stow municipal affordable housing trust, or SMAHT, meets twice a month and has a fully occupied committee.

A full community preservation plan for Stow was created in 2015. In their section on housing, they propose that existing owner occupied homes be deed restricted in exchange for their owners receiving CPA funds. The participants in the program will receive both cash and decreased property taxes. They also proposed purchasing affordable homes and re-selling them with a deed restriction. A similar program was suggested for landlords. However, the plan does not call for the creation of new housing stock at this time. “If the by-laws were to change in the future permitting a denser development of owner occupied homes,” the report notes, “then this approach would possibly be viable.”

This sentence near-completely summarizes the difficulties faced even by towns with a stated commitment to affordable housing. New development is illegal or likely to be shot down, and the development of existing stock cannot accommodate a growing population. To achieve affordability, it is estimated that Massachusetts would need to double its current affordable housing stock (The Gap, 2017) and Connecticut would need to nearly triple its affordable housing stock (The Gap, 2017).

Without a change in zoning plans, an increase in funds, and more advocacy for affordable housing from residents and public officials, the affordable housing Connecticut and Massachusetts need to grow their economies, retain current residents, and draw new ones will not be created.

## V. FINDINGS

The depth of resident activism against affordable housing was one of the most important discoveries made during this process. Conversely, the good faith efforts of developers, town members, and local officials to create affordable housing became obvious. What led me to the recommendations made in the “conclusions” section had much to do with what was not in these records. Neither town had a clear plan outlining a date for achieving ten percent affordability. In fact, the idea of achieving this legal standard was not raised. Despite the presence of qualified town planners, attorneys, and in the case of Stow, town funding, neither town seemed to feel an obligation to address this goal.

A review of Connecticut and Massachusetts’ affordable housing laws is thus poor preparation for educating oneself about the state housing crisis. While both states have theoretically provided developers the tools they need to overcome resident objections to high density, the reality is somewhat different. In Massachusetts and Connecticut, towns are often able to simply ignore the possibility of a developer coming to construct affordable housing, as no penalty mechanism has been imposed. In both states, less than fifteen percent of all municipalities are considered exempt from the “builder’s remedy.” It seems towns have little motive to create affordable housing while the threat of development remains theoretical. In Connecticut and Massachusetts, fewer than twenty percent of towns offer multi-family zoning by right (Bratt, 2016).

Towns like Simsbury have been shown willing to spend heavily to keep out developers, and residents, where they can, have used regulation, litigation, media blitzes, and their votes to stop new construction. While the residents are unlikely to face increased taxation, higher crime,

lower property values, or any tangible negative outcome from the creation of affordable housing, the opposition continues, based on such nebulous, cherished concepts as “character” and “neighborhood preservation.”

Towns benefit directly from the creation of affordable housing as well. It expands their tax base, puts them closer towards the minimum thresholds needed to stop other new development and increases their population. Yet public officials are reflections of the populations who elect them to a large degree. If residents are theoretically in favor of affordable housing but opposed to all new construction for practical purposes, towns will reflect this reality as well.

Solutions to this crisis have proven evasive. Yet there is no reason states must accept the anemic progress towards affordable housing as a given. Multiple courses of action are available for states truly interested in addressing this crisis.



## VI. CONCLUSIONS

The affordable housing crisis, if it is solved, will be cured by multiple factors. One, residents who are more open to new construction must attend town meetings as well and make their voices heard. Two, towns should strengthen their commitment to the creation affordable housing. That towns should refuse to build affordable housing and then spend millions preventing developers from constructing affordable housing is hard to understand.

The state might also step up its enforcement mechanisms. Currently, towns in Connecticut and Massachusetts have no incentive to build affordable housing other than the specter of a developer coming in and possibly building in low-density zoned areas.

The New Jersey system of pre-determining how much affordable housing a town “should” have or construct, then offering to either help the town meet the threshold or pay neighboring towns to meet it for them, might be a solution worth considering for these states, but with a twist. Instead of simply refusing to insulate towns from developers, the state could require this payment to towns who had not met the ten percent threshold. It might be a good way of ensuring that affordable housing is constructed somewhere. Cities which now suffer from limited funding would have another revenue source. Economic justice principles would be satisfied, as poorer communities would obtain funding from wealthier ones. Additionally, the choice between having to make a payment or construct or create affordable housing might spur more towns to increase their stock. Forcing municipalities to make an active choice between paying or building would at least garner more coverage and awareness of the problem.

Massachusetts should also consider counting elderly units for less than working family units. While the creation of such units can be politically popular, there is no particular indication

that those fifty five and older find it more difficult to rent an apartment. In addition, because the white population is more likely to live longer, such units can act as *de facto* if not *de jure* racial segregation. It is also worth considering that while individuals over fifty-five may be needy, as a group those over fifty-five have more median, mean, and average wealth than any group under fifty-four. The fact-based case for setting aside apartments for those over fifty-five is not obvious.

Massachusetts towns can secure exemption from Chapter 40B by meeting the requirement for 1.5 percent of developable land being devoted to affordable housing. This includes commercial and residential zoning, but nonetheless towns have set aside large portions of their land as not developable. While this may preserve green space for future generations, if administered properly as part of a land trust, it is more likely to hamper the growth of any affordable housing. Future policymakers will have to try to change zoning requirements in order to build more housing stock, compounding an existing problem for future generations.

Connecticut clearly needs more of its own, non-governmental, non-partisan, and state-specific non-profit infrastructure. While local community development corporations, housing authorities, and the state are active players in the affordable housing game, the lack of respected and state-focused organizations like CHAPA and Mass Housing Partnership seems to be felt. While Connecticut may allow developers more leeway, the legislature is far more hostile to any attempt to increase affordable housing stock than in Massachusetts, and Sec. 8-30-g lacks the popularity, name recognition, and cachet of Chapter 40B, despite the law's similar methods, goals, and effects.

Perhaps even more extremely, states could take over zoning. While these laws were created with the intent of preserving local control, local control has proved to be more of a tool in service of the wealthy than a public good when it comes to the search for a place to call home. While this is an extreme step taken by few other states, there is one key difference between these places and Connecticut and Massachusetts.

Unlike other states, Connecticut and Massachusetts lack county governments. Connecticut is the only state to abolish it entirely, whereas Massachusetts' counties control nothing more than some state jails and local registries of deeds. Thus, towns' home rule is not mediated by larger regional governments, where poorer towns might be entitled to some tax dollars and shared resources from wealthy towns. Every municipality operates independently, with little concern for their neighbors. More buy-in is needed, whether this is through states appointing regional zoning commissions, towns making payments to other places that have created affordable housing, or additional collaboration on inclusionary zoning as part of regional development plans.

It is also worth noting this solution is not as radical as claimed. A bill was proposed in the Massachusetts Senate in July of 2016 proposing a massive overhaul of the state zoning laws, making it much easier for developers to build denser units and trying to encourage the building of affordable housing. It has been sitting in the Ways and Means Committee for almost two years now. If even a state's own representatives feel the current methods of constructing affordable housing are insufficient, one must question why towns should even have the power to bar certain types of developments, and by extension, certain types of residents.

The graying of southern New England is a regional and national crisis with no clear end in sight. As long as Connecticut and Massachusetts continue to lack affordable housing, younger residents will continue to leave for warmer and more sustainable climates.

## VII. GLOSSARY

*Affordable housing*—generally means housing which costs less than 30 percent of any given household's income (Law Server, 2017)

*Assisted housing*—term used by the state of Connecticut to describe housing which is receiving, or will receive, financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing, and any housing occupied by persons receiving rental assistance (Law Server, 2017)

*Chapter 40B*— a Massachusetts state statute that enables local Zoning Boards of Appeals (ZBAs) to approve affordable housing developments under flexible rules if at least 20-25% of the units have long-term affordability restrictions; also known as the Comprehensive Permit Act (CHAPA, 2011)

*Exclusionary zoning*—thought of as municipal use of the zoning power to exclude persons based on socioeconomic status. Includes requirements such as allowing no multi-family housing with town limits, or excessive minimum lot sizes—generally any lot size above a quarter of an acre.

*DHCD*—Refers to the Massachusetts Department of Housing and Community Development

*DOH*—Refers to the Connecticut Department of Housing

*FHA*—Fair Housing Act; Title VIII of the US Civil Rights Act; prohibits refusal to sell or rent to a person due to their membership in a protected class such as race, color, religion, sex, disability, familial status, or national origin

*HAC*—State Housing Appeals Committee; oversees Chapter 40B appeal process between developers and municipalities who have rejected affordable housing applications

(Commonwealth of Massachusetts, 2018)

*Home rule*—while broadly defined as “local control”, in the context of affordable housing this refers to the right of municipalities to control their own zoning

*HUD*—An acronym for the United States Department of Housing and Urban Development

*IHZ*—An acronym for an incentive housing zone; in Connecticut, these are sites towns may select where units with at least twenty to twenty-five percent affordability can be built

*Low or moderate income housing*—any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization. (Massachusetts State Legislature, 2018)

*Low income*—A household whose adjusted annual income is between twenty-five and eighty percent of the United States Department of Housing and Urban Development’s determinations for their area of residence

*Median income*—after adjustments for family size, the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located, as determined by the United States Department of Housing and Urban Development

*Mt. Laurel*—This collectively refers to the Mt. Laurel I and II opinions by the New Jersey Supreme Court, which were the nation’s first rulings in favor of inclusionary zoning. The full legal name of both cases was *Southern Burlington County N.A.A.C.P. v. Mount Laurel Township*. The initial decision in favor of the NAACP was filed in 1975; the 1983 case added several enforcement mechanisms as little affordable housing had resulted from the 1975 decision.

*Section 8-30-g*—legally defined as Connecticut General Statute Chapter 126a Sec. 8-30g; is used to describe Connecticut’s affordable housing law (Bansal, 2017)

*Very low income*—A household whose adjusted annual income is below twenty-five percent of the median income level determined by United States Department of Housing and Urban Development for their area of residence

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