



Connecticut

Connecticut Chapter of the American Planning Association

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PLANNING AND DEVELOPMENT COMMITTEE

RB – 5641: AN ACT CONCERNING CONSERVATION DEVELOPMENT

OVERVIEW: Connecticut communities have developed and refined careful approaches to manage residential development, consistent with the character and characteristics of individual towns. Many have adopted conservation design subdivision standards and procedures to encourage compatible and lower impact development, what is now called “responsible growth.” It is not clear what shortfall in the current statutory authorizations this bill is intended to address, since towns already have the ability to implement the well-intentioned goals implied by the draft bill.

SUMMARY: This bill would define “conservation development” and provide a process for establishing overlay conservation development zones and approving such development.

ANALYSIS: Based on preliminary review by several knowledgeable planners, a number of clarifications will need consideration if the bill proceeds. For convenience, these preliminary observations are attached as a Technical Issues list.

Many Connecticut communities have adopted special regulations permitting conservation design subdivision developments, usually with standards that allow design flexibility that reduces development costs and sometimes with density bonuses to reward increased open space provision. For example, in Woodbury, 13 of the 25 subdivisions approved over the past six years have taken advantage of the Town’s “Open Space Subdivision” standards. This has resulted in 394 acres of open space instead of the 187 +/- acres that would have resulted from conventional subdivision development. Such designs also result in fewer, shorter, and narrower roads with less impervious coverage and reduced maintenance costs to the town.

Clearly, developers are willing to apply this design concept and are able to accomplish their financial goals with it. Effective streamlining of the process and providing assurance of benefits to all parties are appropriate goals and **CCAPA** will be pleased to work with the Committee and staff to accomplish these goals.

RECOMMENDATIONS: CCAPA recommends that the Committee review the technical issues list appended to this position paper and consider necessary revisions to ensure that any improvements to the statutes addressing residential development are effective and workable.

Additionally, as CCAPA commented in our testimony on SB 39, An Act Concerning Responsible Growth, a more significant problem facing many communities' development planning is the procedure being applied by State agencies to decisions on permitting and funding for development and infrastructure. This applies not only to residential developments or rezoning but also to responsible economic development, properly designed by a local Plan of Conservation and Development, that may require water quality permits, sewer extension approval and funding, or road improvement funding through State grants.

The 2005 – 2010 State Conservation and Development Policies Plan represented a distinct and groundbreaking departure from previous State Plans, by organizing economic, environmental, social, structural, and resource considerations around six basic growth management principles. Unfortunately, current regulatory and policy decisions by certain State agencies appear to be focusing only on the second part of the State Plan, the Locational Guide Map.

Application of the “Locational Guide Map” as a de facto State zoning map is unfair and illogical and fails to recognize local, parcel-specific plans and goals as well as the detailed policies articulated in the growth management principles of the State Conservation and Development Policies Plan. While useful in the proper context, the Location Guide Map does not represent local conditions and the application of growth management principles at the local level. South Windsor, East Windsor, and Wallingford are three towns encountering State agency objections to necessary approvals and funding, based largely on interpretations of the State Locational Guide Map, for local development goals that are consistent with local plans and zoning.

As noted in our comments on SB-39, there is no standard provided for determining “consistency,” creating uncertainty and resulting in potentially arbitrary decisions. **CCAPA recommends that this bill be revised to amend 16a-31 by adding a new subdivision specifying that State agency permit and financial support approvals be based on consistency with the State plan as supplemented by detailed, parcel-specific local plans, specifically the local zoning map adopted per Section 8-3 and the proposed land-use map adopted in accordance with Section 8-23(d)(1)(D).** Suggested language is attached for the Committee’s consideration.

CCAPA POSITION: CCAPA strongly recommends that the Planning and Development Committee carefully consider refinements, definitions, and clarifications of Raised Bill 5641 before any further action. These considerations should include development of specific guidelines for determining consistency of local development projects with the State Conservation and Development Policies Plan and Locational Guide Map for the purposes of Section 16a-31.

CCAPA will be pleased to assist the Committee in any way possible to address these concerns.

RB 5641 An Act Concerning Conservation Development – Technical Issues

Section 2(a)

- Any revision or adoption of zoning regulations must be determined to be consistent with the Plan of Conservation and Development. Conservation Zones would need to be addressed in Plans before regulations adoption or could be subject to legal challenges.
- The first sentence says the zoning commission may adopt regulations establishing a conservation development zone but the next sentence says that after the effective date of such regulations the Commission shall amend those conservation development regulations. This process is unclear.

Section 2(b)

- If the conservation zone is an overlay zone, would its establishment require a zone change proceeding (legislative action) before an administrative approval “of-right”? This does not seem efficient.
- What is the incentive for towns to adopt a density bonus? Towns already routinely require 15 – 20% open space for conventional subdivisions and existing conservation design regulations may provide development economies as well as density bonus opportunities.
- It is not clear what is meant by “the size of lots shall be based on soil characteristics.” Existing conservation design subdivision standards typically have no minimum lot size requirement but rely on the health authority standards for adequate septic treatment if no sanitary sewer is available.
- The terms “advanced treatment wastewater” and “alternative on-site sewage treatment” need to be defined.
- Contemporary conservation design standards either provide bulk and area flexibility or alternative standards. The need for and function of a waiver provision is not clear.
- It is not clear why open space criteria are limited to wildlife habitation or use. The open space authority provided in Section 8-24 refers to open spaces, parks and playgrounds without such a specific definition.
- The phrase “vertical slopes too extreme for development and which would yield a profit equivalent to a development on land without a vertical slope” as part of the open space definition needs clarification. What defines a vertical slope?

Sections 4 and 6

- A conservation development shall be approved by the zoning commission and the requisite subdivision shall be approved by the planning commission. The efficacy of this approach is not apparent. Site development approval by the zoning commission may not comply with infrastructure design requirements associated with subdivisions, requiring applicants to return to zoning for amendments after subdivision approval. Of course, alterations to initial plans may require revisions to inland wetlands approvals. Some towns with separate planning and zoning commissions address this problem by assigning special exception responsibility for conservation design subdivisions to the planning commission based on zoning regulations but considered at the same time as the subdivision.
- The language acknowledges a growing problem: unavailability of a grantee for open space. Monitoring and management costs make towns and even land trusts reluctant to accept open space without separate funding for management costs. The bill could address this by requiring a cash component of the open space formula.
- The reference to approval under Chapter 126 confuses subdivision approval (planning) with use approval (zoning). A subdivision to implement a conservation development is not a use, of-right or otherwise. Subdivisions are already of-right where all applicable standards are met.

Section 8

- Grants for alternative on-site sewage treatment systems are proposed, but other legislation (SB 136) proposes a moratorium on such systems.

RB 5641 An Act Concerning Conservation Development – Suggested Additional Revision

Sec. 16a-31. Application of plan. (a) The following actions when undertaken by any state agency, with state or federal funds, shall be consistent with the plan:

(1) The acquisition of real property when the acquisition costs are in excess of one hundred thousand dollars;

(2) The development or improvement of real property when the development costs are in excess of one hundred thousand dollars;

(3) The acquisition of public transportation equipment or facilities when the acquisition costs are in excess of one hundred thousand dollars; and

(4) The authorization of each state grant, any application for which is not pending on July 1, 1991, for an amount in excess of one hundred thousand dollars, for the acquisition or development or improvement of real property or for the acquisition of public transportation equipment or facilities.

(b) A state agency shall request, and the secretary shall provide, an advisory statement commenting on the extent to which any of the actions specified in subsection (a) of this section conforms to the plan and any agency may request and the secretary shall provide such other advisory reports as the state agency deems advisable.

(c) The secretary shall submit and the State Bond Commission shall consider prior to the allocation of any bond funds for any of the actions specified in subsection (a) an advisory statement commenting on the extent to which such action is in conformity with the plan of conservation and development.

(d) Notwithstanding subsection (b) of this section, The University of Connecticut shall request, and the secretary shall provide, an advisory statement commenting on the extent the projects included in the third phase of UConn 2000, as defined in subdivision (25) of section 10a-109c, conform to the plan and the university may request and the secretary shall provide such other advisory reports as the university deems advisable. Notwithstanding subsection (c) of this section, the secretary shall submit and the State Bond Commission shall consider prior to the approval of the master resolution or indenture for securities for the third phase of UConn 2000, pursuant to subsection (c) of section 10a-109g, the advisory statement prepared under this subsection.

(e) Whenever a state agency is required by state or federal law to prepare a plan, it shall consider the state plan of conservation and development in the preparation of such plan. A draft of such plan shall be submitted to the secretary who shall provide for the preparer of the plan an advisory report commenting on the extent to which the proposed plan conforms to the state plan of conservation and development.

(f) For the purposes of this Section, whenever any advisory statement is requested for action by a state agency on application for permits or funding for a local development project, such advisory statement shall consider the State conservation and development policies plan and its locational guide map in conjunction with (1) the respective local plan of conservation and development prepared in accordance with Section 8-23, (2) any local map showing zoning district boundaries adopted in accordance with Section 8-23, and (3) any local map showing proposed land uses prepared in accordance with Section 8-23(d)(1)(D).

Suggested revision language is underlined.