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March 3, 2008

To: Senator Eric Coleman, Co-Chairman
Representative Art Feltman, Co-Chairman
Members of the Planning & Development Committee

From: Bill Ethier, Executive Vice President & General Counsel

Re: **Raised Bill 5641, AAC Conservation Development**

The HBACT is a professional trade association with over one thousand five hundred (1,500+) member firms statewide employing tens of thousands of Connecticut's citizens. Our members are residential and commercial builders, land developers, remodelers, subcontractors, suppliers and those businesses and professionals providing services to this diverse industry. We also created and administer the CT Developers Council, a professional forum for the land development industry in the state.

The HBA of Connecticut strongly supports RB 5641 provided certain necessary amendments are made. Our comments are extensive because we believe this bill has much merit, provided again that it is amended.

Conservation developments, also known as clustered housing, open space developments, planned unit developments and a variety of other names, is well defined in the bill. **These types of developments provide both necessary housing options for consumers while also protecting more useful or beneficial open spaces for the public. They are generally a win – win development method when they can be economically built. It is this latter proposition that leads us to urge you to make amendments to the bill so that it will have its desired effect of encouraging these developments.**

As background, conservation developments can be done in different ways. They can be a condominium, planned unit, or apartment development where the land is not subdivided and is maintained under one owner, typically an association of unit occupants or a landlord, but the housing is concentrated in one part of the entire site. The open space land can be maintained by the community association or landlord or, typically, it is dedicated to the public or a land trust. In these cases, a site plan application is filed before a zoning commission under chapter 124. The other way to do these developments is to subdivide the land into separate lots that will have separate owners. The housing would be built on smaller, clustered lots, while the open space is dedicated to the public or a land trust organization. In this case, a subdivision application is filed under chapter 126 before a planning (not zoning) commission. As you know, there are strong ties (i.e., cross references) between chapters 124 and 126.

The biggest problems that interfere with pursuing more conservation developments in Connecticut are two-fold:

1. The lack of consistency and the wide variation in rules among our 169 municipalities. This lack of consistency and uniformity discourages developers from pursuing more of these developments; and
2. The ability, which is often carried out by P&Z commissions, to refer conservation developments, whether filed under chapter 124 or 126, to zoning commissions to obtain a special exception or special permit. This is a huge deterrent because site plan and subdivision applications are "as-of-right" applications where P&Z commission discretion is limited to reviewing whether the application complies with the regulations. But in the special permit or exception process, P&Z commissions have complete and unbounded discretion to review applications. Therefore, developers avoid the special permit and exception process as much as possible.

Also, while we seek more uniformity and certainty in our land use regulations and processes, we strongly urge you to resist attempts that may be made by others to make conservation developments mandatory. They should be an option for both the municipality and the developer. While a segment of the housing marketplace will buy or rent in clustered housing developments, there is another segment of the marketplace that prefers traditional larger lot housing. Connecticut needs to accommodate the entire housing marketplace if we are to grow our economy and have healthy, well balanced communities. **RB 5641 accommodates this policy because it does not mandate on any municipality that conservation developments be done, but it does say, if you are going to do them they must be done under the framework of this bill. We think this is sound policy.**

Further, we want to dispel common notions about conservation developments, i.e., that developers save a lot of money by concentrating homes in a smaller area because they will get the same number of lots or more while having to construct shorter roads and utilities. The truth is that the savings from building shorter roads and utilities is not that great and usually is more than offset by the lower value that clustered lots have in the marketplace. These lots have a lower value and must be sold at lower costs because in a clustered development the lots are smaller and closer to one's neighbor. Therefore, density bonuses are critical to the pursuit and success of these developments. So, we urge you to not overestimate the cost savings to the development community. It also means that if you want to encourage developers to pursue more of these types of developments, the legislation needs to accommodate increased densities that offset both the land the developer must give up to open space and the lower value of the clustered lots.

RB 5641 addresses the issue of lack of uniformity among our towns and cities by establishing common rules for conservation development zones. While we have suggestions on improving the language, we strongly support the attempt to do this. The bill also does not say, appropriately, that all conservation developments must be one size. It provides a range of options (i.e., in the amount of land to be dedicated to open

space and corresponding increased densities to encourage developers to pursue them). **We urge you to adjust the corresponding density increases (see below) but the framework of the bill to create a range of conservation developments is sound and should be supported.**

RB 5641, section 2(b)(1), also addresses, in part, the issue of the uncertain discretionary special exception or permit processes. But it does so only in regards to site plan applications. A similar provision must also be included for subdivision applications. **We strongly urge you to broaden this subsection to include any conservation development filed under chapters 124 or 126 of the general statutes. We cannot support the bill without this critically necessary amendment. Chapter 124 also needs to be added to line 234 because, again, there are strong cross references between these two land use chapters and planning commissions under chapter 126 do refer subdivision applications to zoning commissions for consideration under chapter 124 special permit or exception regulations, defeating the utility (to the extent there is any) of an “as-of-right” subdivision application.**

Regarding the amount of open space land to be set aside in a conservation development and the corresponding density increases allowed, we strongly urge you to adjust the ratios in the bill. We urge you to change “twenty-five percent” at line 39 to “twenty percent.” The range of open space in a conservation development that a zoning commission can choose is defined at lines 60 – 61 as between twenty and fifty percent. Keep in mind that this open space range is after other land is discounted or set aside from consideration (see lines 62 – 70). That is, the 20 – 50% open space is taken from the remaining developable land. **If you leave line 39 at twenty-five percent, that means a municipality can require 24.9 percent of developable land to be left in open space with no density increase. That not only is not fair to developers but also an easy way for a municipality to discourage these developments.** All they need do is adopt their conservation development overlay zones requiring 24.9 percent to be set aside as open space knowing that developers are unlikely to come to the table.

Likewise, the higher ends of the open space ranges listed in lines 38 – 43, relative to the allowable increased densities, will create disincentives for developers to pursue these developments. Municipalities will set their open space set asides at the highest end of these ranges. For example, in addition to the problem noted above regarding allowing no density increase for a 24.9% set aside, the bill will produce zoning ordinances that require a 34.9% open space set aside with only a 10% density bonus, or a 44% open space set aside with only a 20% density bonus. **We respectfully request that you be more generous with the increased densities allowed if the goal is to encourage developers to pursue conservation developments.** Therefore, recognizing that zoning commissions will gravitate to the higher end of these ranges for their open space set asides, we urge you to replace lines 36 – 43 with the following:

“(2) The number of housing units per acre in the conservation development zone shall constitute an increase over the housing density of the underlying zone of (A) at least twelve percent if the amount of land set aside as open space is more than twenty per cent of the development area, (B) at least twenty-two percent if the amount of land set aside as open space is more than thirty per cent of the development area, or (C) at least thirty per cent if the amount of land set aside as open space is more than forty per cent of the development area. The density provided for in this ...”

Without these percentage changes, the reality is that the development community is not going to be very excited about pursuing conservation developments. The benefit of these percentage changes is that the bill would represent a balanced approach to both conservation of open space and the construction of critically needed housing.

Other suggested amendments to improve the bill include:

At line 48, the term “advanced treatment wastewater system” should be changed to “alternative on-site sewage treatment system” as the term is used at line 53 and lines 305-306. This corresponds to the commonly accepted terminology for these systems (also known as AT systems) and to other statutory references. The terms should be consistent so there’s no confusion.

The reference to “section 2 of this act” at line 138 should be changed to “sections 2 through 4 of this act.”

Finally, while we agree with section 8 that diverts 5% of the clean water funds to promote AT systems to accommodate clustered housing, this will be a lightning rod for both DEP and OPM opposition that could kill the bill. We respectfully suggest that this is a battle that needs to take place outside the parameters of this conservation development legislation. It is also a provision that would send the bill to the Appropriations Committee, where it is likely to die.

Thank you for the opportunity to comment on this important legislation.